LEVIRATE MARRIAGE AND THE FAMILY IN ANCIENT JUDAISM
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This book is dedicated to the memory of my teacher

**DR. BARUCH M. BOKSER**

Rabbi Eleazar ben Shammua said:

*Let the honor of your student be as dear to you as your own . . .

and your awe of your teacher like your awe of Heaven.*

(Pirkei Avot 4:12)
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Foreword

The Hadassah-Brandeis Institute (HBI) is delighted to present this study of the nuclear family in ancient Judaism by Dvora E. Weisberg, associate professor of rabbinic literature and director of the Simha and Sara Lainer Beit Midrash at Hebrew Union College–Jewish Institute of Religion in Los Angeles. In this engagingly written book, Weisberg offers fresh ideas about Jews and gender, the very purpose for which the HBI was established. Her subject matter specifically is the levirate widow, “a woman whose husband has died without children” and who therefore must be available to her brother-in-law for marriage.

What can we learn from the predicament of such a woman? Weisberg shows us that examining the levirate widow enables us to consider “the status of women as they move in and out of families through marriage.” The levirate widow is in a liminal place between family membership and non-membership, between childlessness and possible motherhood, between acceptance and rejection.

Although hers is not a work of anthropology, Weisberg understands that because there is “relatively little information about levirate in ancient Israel, it is helpful to supplement that information with data from other societies.” She also wisely discusses the functions that levirate marriage served for ancient Israelites and “why it was problematic for the early rabbis.”

Ultimately, however, Weisberg does not limit her attention to the bonds between brothers, between husband and wife, or between father
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and child. Instead, her goal is to reflect on what takes precedence in Jewish decision-making. First, the nuclear family takes precedence over the extended family—an unusual argument to emerge from a study of how widows are expected to marry their brothers-in-law if there are no male heirs. Second, the individual takes precedence over any group. As she puts it, “the rabbis emphasize . . . their concern for individual men and women, whose marriage choices the rabbis defend against the claims of the deceased and the extended family” (emphasis added).

Moreover, the living take precedence over the dead. The freedom to choose—at least for the men—reigns supreme. But in the man’s freedom to choose lies the kernel of the woman’s options as well, for if the living brother does not choose her, then she is not bound to him and can make a new way for herself.

*Levirate Marriage and the Family in Ancient Judaism* joins many other books in the HBI Series on Jewish Women that offer new readings of ancient texts. These include Anne Lapidus Lerner’s *Eternally Eve: Images of Eve in the Hebrew Bible, Midrash, and Modern Jewish Poetry*; Rahel R. Wasserfall’s *Women and Water: Menstruation in Jewish Life and Law*; Elizabeth Wyner Mark’s *The Covenant of Circumcision: New Perspectives on an Ancient Jewish Rite*; Rochelle L. Millen’s *Women, Birth, and Death in Jewish Law and Practice*; Judith R. Baskin’s *Midrashic Women: Formations of the Feminine in Rabbinic Literature* and Tamar Ross’s *Expanding the Palace of Torah: Orthodoxy and Feminism*.

It is my sincere hope that, singly and together, these books are deepening our understanding of the gendered meaning of Jewish texts and practices.

Shulamit Reinharz
Brandeis University
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I want to thank Rachel Timoner and Andrea Namaste for their help in preparing the manuscript. My editor, Phyllis Deutsch, has been a joy to work with.

My family has been an incredible source of support. My children, Micah and Noah, have tolerated learning much more about levirate marriage than they ever wanted to. Noah has pushed me forward by threatening to write his own book. Micah is a careful reader, whose sense of style has enriched my own writing. My husband, Neal, has encouraged me during the difficult moments in my work and cheered me on during my successes.

This book is dedicated to my doctoral adviser, Dr. Baruch Bokser, z”l. Dr. Bokser not only helped me become a scholar; he was an exceptional model of a teacher. From the moment he became my teacher until his death, Dr. Bokser was a devoted adviser, even reading portions of my dissertation in his hospital bed. The care and attention I have given my students is a tribute to his example—what is mine and theirs is his.
NOTE ON TRANSLATIONS AND ABBREVIATIONS


Translations from the Palestinian Talmud are from Jacob Neusner, *The Talmud of the Land of Israel: Yebamot* (Chicago: University of Chicago Press, 1987). Translations of all other rabbinic texts are my own.

The following abbreviations are used for biblical books: Gen. (Genesis), Ex. (Exodus), Lev. (Leviticus), Num. (Numbers), Deut. (Deuteronomy), I Sam. (I Samuel), and Ps. (Psalms).

The following abbreviations are used in referencing rabbinic texts: M. (Mishnah), T. (Tosefta), B. (Babylonian Talmud, or Bavli), and Y. (Palestinian Talmud, or Yerushalmi). The following abbreviations are used for individual tractates from these works: Ber. (Berakhot), Eruv. (Eruvin), Pes. (Pesahim), RH (Rosh Hashana), Meg. (Megilla), MQ (Moed Qatan), Hag. (Hagiga), Yev. (Yevamot), Ket. (Ketubot), Ned. (Nedarim), Git. (Gittin), Qid. (Qiddushin), BQ (Baba Qamma), BM (Baba Metzia), BB (Baba Batra), and San. (Sanhedrin). The abbreviation “R.” indicates Rabbi or Rav.
Introduction

To understand the constantly changing nature of families, just flip through a photo album. Begin by opening the album to a wedding picture. Captured on the page is a newly married couple, surrounded by parents and siblings. Before the wedding, the parents of the couple, together with their respective children, constituted two separate families. Now, those family units have been altered; each, according to our understanding, has gained a member. Moreover, the two original families’ relationship to each other has been transformed; once unrelated, they are now each other’s “in-laws.”

If we turn the pages forward to the couple’s twentieth anniversary, we will see more changes. The couple now has children. Brothers and sisters have married and may also have children. Grandparents, aunts, and uncles who were present at the wedding have died. Young relatives of the couple have grown up.

It is not uncommon today to hear people lament changes in the family. Families, they claim, are not as close as they used to be. Families are also seen as increasingly unstable, owing to rising rates of divorce and remarriage. In addition, definitions of family are being challenged by an increase in same-sex couples, blended families, open adoption, and couples living together for extended periods of time without marrying. But as our photo album demonstrates, the family is by its very nature a constantly changing entity. Individual families change, swelled by marriage, birth, and adoption, and made smaller by divorce and death.
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A society’s definition of family can also change, reflecting patterns of settlement, understanding of marriage, and other factors.

This book explores how the sages who wrote the foundation documents of rabbinic Judaism understood kinship and family. I will argue that while rabbinic literature constructs kinship broadly, asserting that family ties may be created through both blood and marriage, through both father and mother, the primary family unit discussed in rabbinic literature is the nuclear family, comprising a husband and wife and their children. This family is defined by the obligations the individuals in it have to each other, in particular the obligations between husband and wife, and between father and children. This focus on the nuclear family prioritizes an adult man and woman’s obligations to their “new” family, the family created by their marriage, over those to their families of origin. Those earlier bonds are not dissolved—a woman remains part of her family of origin (she may inherit from her parents and other relatives, she is required to mourn for her parents and siblings, she is still obligated to honor her parents), as does a man. In fact, the bonds are extended; each spouse becomes “kin” to his or her in-laws, assuming obligations with regard to mourning, incest prohibitions, and testimony. However, the focus of family law is the nuclear family, and it is the obligations of the husband and wife to each other that take center stage in shaping their relationships with other family members.

Furthermore, this focus on the nuclear family over the extended family or clan is accompanied by an emphasis on the self over the extended group. The decisions an individual makes about taking on family obligations, specifically obligations to spouse and children, are seen in rabbinic literature as personal decisions rather than decisions made by or for the sake of the extended family. The early rabbis regard marriage and procreation as religious obligations, and these obligations fall on every individual (or, more precisely, on every male Jew). While rabbinic law does assign individuals specific rights and responsibilities in connection to relatives beyond the nuclear family, the individual remains the focus of religious law. When individuals are considered members of a group, that group is more likely to reflect marital status, physical disabilities, or priestly status (to name a few) than kinship ties. Individuals are labeled divorcées, priests, or deaf-mutes rather than members of a kindred. An individual man or woman may be part of many groups from...
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the perspective of the law, but he or she will not necessarily have obligations to other members of that group.

This work uses as its primary lens rabbinic discussions of levirate, an institution that involves the union of a man and the widow of his childless brother. Under normal circumstances, a marriage marks the beginning of a new family unit and/or the expansion or blending of existing families. Levirate, on the other hand, comes into play when a family experiences the loss of a member. As such, it offers an opportunity to study the family at a moment of breakdown and restructuring. And, I will argue, it allows us to consider one response to the collapse of a family, namely, an attempt to mend that which has been broken, reconstituting one part of a family by rearranging its members and realigning their relationship to each other. However, as we shall see, the rabbis’ unique construct of levirate results in that institution’s creating an entirely new family rather than re-forming the one broken by the husband’s death. This rabbinic understanding of levirate supports my claim that the central family unit in rabbinic Judaism is the nuclear family and that an individual man or woman’s primary obligations are to an existing spouse rather than to the extended family, as represented here by a deceased spouse or sibling.

The primary discussion of levirate in the Hebrew Bible highlights the complexity of families in crisis:

When brothers dwell together and one of them dies and leaves no son, the wife of the deceased shall not be married to a stranger, outside the family. Her husband’s brother shall unite with her: he shall take her as his wife and perform the levir’s duty. The first son that she bears shall be accounted to the dead brother, that his name may not be blotted out in Israel. But if the brother does not want to marry his brother’s widow, his brother’s widow shall appear before the elders in the gate and declare, “My husband’s brother refuses to establish a name in Israel for his brother; he will not perform the duty of a levir. The elders of his town shall then summon him and talk to him. If he insists, saying, “I do not want to marry her,” 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
This passage from Deuteronomy walks us through the unraveling of a family. The opening words, “When brothers dwell together,” offer an idyllic vision of family life, recalling the words of the Psalmist, “How good and pleasant it is when brothers dwell together.” In contrast to the brothers described in the narratives of Genesis, the brothers of Deuteronomy 25:5 live together in harmony. Then, suddenly, “one of them dies.” We are left with a brother—the passage focuses on a scenario in which there is only one surviving brother—bereft of his sibling. The next words, “and leaves no son,” compound the tragedy; the deceased has no son to carry on his lineage or inherit his property.

But the deceased did leave a wife. The presence of the widow inspires in the text a discussion about the possibility of rebuilding and restoring this broken family. Rather than accept the fact that the death of a childless man leaves his family broken beyond repair, with the widow leaving her husband’s family to marry a “stranger, outside the family,” Deuteronomy 25 proposes a union between the deceased’s widow and his brother. The widow remains a part of her family-by-marriage, with her brother-in-law in a sense taking his dead brother’s place. And, when the woman gives birth, the resulting child can be “accounted to the dead brother” guaranteeing him a “name in Israel.” A man’s name, lost when he dies without children, can be restored through the actions of his surviving kin: his widow and his brother. These verses offer the possibility of a happy ending to a family tragedy.

However, Deuteronomy warns us, this happy ending may not be achievable. The surviving brother may not want to marry his brother’s widow. While the leaders of the community can intervene, there is apparently no way to force a man to “perform his duty.” The most a scorned widow can hope for is to humiliate her brother-in-law, removing his sandal, spitting at him, and decrying his unwillingness to “build up his brother’s house.” The family remains broken; the deceased has no one to carry on his name; the childless widow is left to find her way in the world— the Bible offers no information about the choices open to her if she is rejected by her brother-in-law—and the brother is revealed, and reviled, as a man with no family loyalty. The two possibilities of
hope restored or hope dashed make levirate an institution that offers a fascinating opportunity to study the complex relationships that exist within families.

In his study of Jewish marriage in antiquity, Michael Satlow “focus[es] attention on the gap between marital ideologies and ideals and their realities.” A study of levirate marriage reveals such a clash of ideals and reality. Ideally, brothers live and work together, sharing common economic interests and a commitment to their family’s continuity. In such a world, a brother would gladly assume responsibility for his brother’s widow and provide his brother with an heir. In reality, brothers may have competing interests. A man’s own interests may trump those of his deceased brother. In line to inherit the estate of his childless brother, a man might be reluctant to sire a child who would displace him as his brother’s heir. This reluctance is already acknowledged in the Hebrew Bible, where Onan’s refusal to consummate his union with Tamar is attributed to his realization that “the seed would not count as his.” While Onan’s actions are condemned by God and the narrator of Genesis 38, his concerns underscore a real tension that will be addressed in later discussions of levirate analyzed in this book.

A widow might consider remaining within her husband’s family a desirable outcome, and she might want to provide her late husband with a posthumous child. However, she might find marriage to her brother-in-law distasteful and prefer to contemplate marriage outside her husband’s family. On some level, levirate as laid out in Deuteronomy 25 is an institution that controls women, allowing the claims of a woman’s husband and his family to determine her future. This understanding of levirate, however, is complicated by biblical narratives that portray Tamar and Naomi promoting unions that male relatives resist. One could read these stories as evidence that childless widows were relatively powerless and may have seen levirate as their only viable option, but one could also argue that the Hebrew Bible promotes levirate as a desirable course for women or sees married women as full members of their husband’s family, eager to promote the continuity of that family even after the husband’s death. Later rabbinic discussions of levirate indicate that directing widows into levirate unions was a complex undertaking that sometimes failed; some rabbinic texts portray women as independent agents focused on their own future rather than that of their husband’s family.
Although laws ordering relationships between family members are meant to maintain order and promote harmony in the family, levirate highlights the tensions that can arise when the goals of these laws and the interests of the affected parties clash. In particular, levirate calls on two individuals, the brother and widow of the deceased, to contemplate a transformed relationship, to shift from their roles as brother-in-law and sister-in-law to husband and wife. Deuteronomy 25 and Genesis 38 suggest that this transition was not always a desirable one, at least for the man. Rabbinic texts continue to explore the tensions involved in responding to the levirate obligation, noting that both parties may be reluctant to fulfill the obligation. The rabbis also acknowledge, and more or less condone, the unwillingness of the living to provide for the continuity of the dead.

The early rabbis’ transformation of levirate marriage reveals another type of clash, the clash between the expectations conveyed in a community’s sacred scripture and the changing reality and social norms of that community. Deuteronomy presents levirate as a mechanism to ensure the preservation of a man’s “name” or lineage. But the surviving brother already ensures the continuation of the family line. Furthermore, in biblical genealogies that include men born through levirate unions, such children are accounted the sons of their genitor and not of their mothers’ deceased husband. Rabbinic discussions assign the property of a deceased childless man to his brothers; if a man enters into a levirate union, he inherits the estate of the deceased, bequeathing it upon his death to all of his sons, whether or not they were the result of the levirate union. It can be argued that rabbinic levirate does not achieve the goals set forth in Deuteronomy 25; the deceased has no child and his property passes to his brothers. In adapting levirate to their world, the rabbis in fact ignore some or all of its biblical rationales. Because rabbinic notions of the family and the individual’s place in the family are at odds with a traditional construct of levirate, levirate is for all intents and purposes abandoned. The retention of the union between the deceased’s widow and his brother may signal a different rationale for levirate, or it may indicate the unwillingness of the rabbis to entirely uproot a biblical law when they did not find the law morally problematic.

This book uses as its primary source of information about the ancient rabbis the texts they produced. These texts do not offer demographic
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information, nor can they be used uncritically as historical witnesses. I treat rabbinic texts as prescriptive rather than descriptive, insofar as they describe institutions the way the rabbis wanted them to be rather than the way they actually were. This book, therefore, does not attempt to describe the ancient Jewish family as it existed in Roman Palestine or Sasanian Babylonia during the first six centuries of the Common Era. Instead it explores how the rabbis imagined family relationships and dynamics, through laws and through stories.

The texts discussed in this book are not monolithic. The earliest texts, the Mishnah and the Tosefta, were produced in Palestine toward the end of the second and beginning of the third century CE.12 The Palestinian Talmud was edited several hundred years later in the same land; the Babylonian Talmud was completed even later and against a different political, social, and economic backdrop. Levirate marriage may be viewed as more useful or more problematic in different settings. We might expect, therefore, to find a variety of views and opinions about questions of levirate marriage and about the family structures that support or inhibit levirate.

Tracing the evolution of levirate law in early rabbinic Judaism is complicated by the difficulty of dating individual rabbinic traditions. While many of these traditions are attributed to rabbis who are associated with specific times and places, many contemporary scholars have questioned the reliability of these attributions.13 Rather than rely on attributions and assign individual traditions to the rabbis with whose names they are associated, scholars now recognize that traditions in a given work, regardless of attribution, may better be understood as expressing the viewpoint of the text’s redactors. Accordingly, we will consider the approach of the Mishnah or the Babylonian Talmud to an issue rather than assign that viewpoint to a specific rabbi. Following the work of scholars like Daniel Boyarin, Richard Kalmin, and Michael Satlow, among others, we will consider differences in approach to levirate marriage in Palestinian and Babylonian sources.

I am, by training and inclination, a scholar of rabbinics, and the primary focus of this book is on rabbinic Judaism’s understanding of the family. At the same time, levirate operated and operates in many cultures, and often correlates with certain types of kinship structure and marriage systems. Insofar as knowledge of levirate in other settings
helps me understand levirate in ancient Judaism, I use anthropology
and cross-cultural comparison to elucidate issues that arise in bibli-
cal and rabbinic texts. I appreciate that what is true of one culture may
not be true of another. However, anthropological studies of kinship of-fer models by which a scholar may evaluate any society’s construct of
kinship and marriage, and applying these models to rabbinic literature
allows us to reflect on the significance of the rabbis’ descriptions of re-
lationships among family members.

I will also consider the marriage and kinship systems of the Roman
Empire and the Sasanian Empire, the settings in which ancient rabbinic
literature was produced. Scholars of rabbinics have become increas-
ingly aware that rabbinic culture did not arise in a vacuum, and that the
knowledge of ancient Roman and Babylonian law and literature enables
us to better understand rabbinic Judaism. I have argued elsewhere that
Roman and Babylonian constructs of marriage and heirship may help
explain attitudes toward levirate in ancient Judaism, particularly the
differences between Palestinian and Babylonian traditions. Levirate
was viewed as a valuable strategy to obtain an heir in Sasanian Baby-
lonia, the setting of the Babylonian Talmud. The Bavli’s interest in levi-
rate, as well as its particular interpretation of the levirate law, should be
studied against the backdrop of Iranian law. Similarly, the Palestinian
sources’ preference for halitza, the rite of release, over levirate mar-
riage may be better understood by studying Roman strategies of heirship,
which did not include levirate.

The first two chapters of this book serve as an introduction to levirate
in general and levirate in Judaism in particular. The first chapter offers
a brief introduction to levirate from a cross-cultural perspective. We
have relatively little information about levirate in ancient Israel, and it is
helpful to supplement that information with data from other societies.
In addition, a consideration of how levirate fits into marriage and kin-
ship systems, and an understanding of the type of marriage system that
supports levirate, may help us understand why and how levirate served
ancient Israelites and why it was more problematic for the early rabbis.
A society’s use of levirate is closely linked to its understanding of family,
marriage, and inheritance; a comparison between those assumptions
in other cultures and those of the rabbis of Late Antiquity may help us
appreciate the rabbis’ desire to reconceive levirate.
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Chapter 2 begins with an analysis of levirate in the Hebrew Bible. Rabbinic constructs of levirate represent the rabbis' commitment to read biblical texts in ways that make those texts speak to Jews in Late Antiquity. Before turning to rabbinic levirate law, we need to understand the biblical texts and consider the role levirate might have played in the ancient Israelite family. At the end of the chapter, I survey the limited Second Temple literature regarding levirate and segue into rabbinic texts, using the Mishnah and the Tosefta to provide a brief overview of rabbinic law regarding levirate.

The third chapter deals with kinship and family structure as described in rabbinic literature. It explores different definitions of family in rabbinic legal texts that deal with mourning, testimony, incest, and inheritance, as well as levirate marriage. It also analyzes kinship terminology in rabbinic literature. This exploration will determine how the rabbis understood family in its broadest and narrowest senses, and how those definitions shaped and are reflected in levirate law.

Chapter 4 discusses relationships among brothers. Levirate rests on the assumption that a man has an obligation to provide children for his deceased brother. This assumption suggests a bond between brothers that fosters a sense of mutual support and obligation that might supersede one brother's self-interest. While rabbinic law treats the surviving brothers as a unit—any one of them can respond to the levirate obligation on behalf of all the brothers—it also recognizes the tensions that may arise when brothers have conflicting interests. This chapter reveals the tensions between the individual's interests and those of the family, and suggests that the rabbis were willing to promote the former, even if it meant undermining levirate.

Chapter 5 focuses on the levirate widow, a woman whose husband has died without children. The levirate widow is in a unique legal position; she is not free to remarry as she chooses, but must wait for her husband's brother to marry her or release her. The levirate obligation has an impact on her economic status and her status regarding vows; she has more freedom than a wife but less than a normal widow. Her position with regard to her family of origin and her late husband's family is also unique. As a childless widow, she has no blood ties to any member of her husband's family, and the marriage that brought her into their family has ended. However, the levirate bond makes her a candidate to
"reenter" her husband’s family, to resume her status in it as wife and in-law. Analysis of the status and position of the levirate widow allows us to consider the status of women as they move in and out of families through marriage; it also allows us to consider rabbinic understanding of the relationships between women and their in-laws.

The sixth chapter discusses the child of a levirate union. At issue are the child’s paternity and his or her place in the father’s family. A child is both the stated goal of a levirate union and its greatest challenge. If assigned to the deceased, the child enters the world fatherless and dis-inherits his or her presumed biological father, the levir. If assigned to the levir, the child is part of a “normal” family, but even a male child cannot inherit the estate of the deceased or carry on his name. In this chapter, we evaluate levirate as a strategy of continuity in Late Antique Judaism and consider what, if any, alternative strategies could be employed. Our analysis includes the place of procreation in rabbinic law and the options that existed for a man who failed to father children.

Recent discussions of the Jewish family in Late Antiquity have argued that it is important to offer a definition of family, but have not actually done so. Instead, these discussions have focused on two aspects of familial relationships, the husband–wife relationship and the parent–child relationship. I agree that these relationships are, in fact, the central family relationships considered in rabbinic Judaism, which focuses on the nuclear rather than the extended family. My goal is to expand the discussion of the Jewish family in antiquity by exploring broader definitions of kinship, in order to better understand the web of relationships that define families and the ways that individuals might navigate among these relationships and manage their multiple roles within the family.

Scholars are generally in agreement that the Jewish family in antiquity was not distinctively “Jewish,” but reflected the structure and values of the Greco-Roman family. Michael Satlow makes a similar claim for Jewish marriage in antiquity. In his very brief treatment of levirate marriage, which he labels an “irregular union,” Satlow suggests that the *tannaim*, the Palestinian rabbis of the second and third centuries, associated levirate with the Greek *epiclerate*, an institution designed to ensure the orderly transfer of property within a family. The Palestinian
rabbis’ lack of enthusiasm for levirate can thus be understood, in part, by their views of marriage and family, which were similar to those of their Greek and Roman neighbors. Levirate was not employed in these cultures, and the primary purpose of reproduction was the establishment of a household, rendering the engendering of a child for a man after his death unnecessary. Satlow notes that the Babylonian milieu was more supportive of levirate and polygyny, allowing the Babylonian rabbis to promote, or at least condone, levirate.17

Satlow’s treatment of levirate supports his thesis about the connections between Jewish views of marriage and those of the Greco-Roman world and Babylonia. While I do not dispute his primary arguments, I think that in labeling levirate as an irregular union, Satlow misses a key aspect of the rabbis’ transformation of levirate. Both Palestinian and Babylonian sources, whether discouraging levirate or promoting it, describe levirate as a union that, once consummated, is regular. The Tosefta recommends that a levirate union be preceded by a declaration of intent that parallels formal betrothal. The Mishnah states that after a man marries his brother’s widow, “she is like his wife in every way,” insisting that a levirate union operates like a “regular” marriage. The children of the union are recognized as the children of the woman’s new husband rather than of the deceased, thus contravening the biblical view. In these ways, the rabbis “regularize” levirate; the union is irregular only in its inception.

Satlow claims that Palestinian and Babylonian rabbinic attitudes toward levirate can be understood through the lens of Greco-Roman and Sasanian culture. My work demonstrates that while rabbinic preference for levirate or halitza can better be understood against the backdrop of these cultures, the rabbis’ decision to regularize levirate can best be appreciated in the context of their views of the family and their focus on the nuclear family. The elements of levirate the rabbis emphasize reflect their concern for individual men and women, whose marriage choices the rabbis defend against the claims of the deceased and the extended family, and their construct of paternity, which privileges the rights of the living husband and father over those of his dead brother. The rabbinic law of levirate, therefore, represents not only the influence of the broader culture on Jews but the employment of rabbinic herme-
neutics to support a vision of the family and the place of the individual within the family that differs considerably from that of the rabbis’ forebears. The study of levirate law in classical rabbinic texts enables us to see how the rabbis of Late Antiquity mediated between the ancient texts that they held to be sacred and changing definitions of the family and the individual’s role in it.
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What is levirate and how did it function in ancient Israel and early Judaism? Was levirate in ancient Israel treated as a new marriage, or was the levir, the brother of the deceased husband, simply a sexual surrogate for his brother? Was the levir marrying his sister-in-law, inheriting her as part of his brother’s estate, or merely serving as the genitor of children whose legal father was their mother’s late husband? What function did levirate play in the marriage system of the ancient Israelites? Was it intended to provide a wife for the deceased’s brother, a home for a childless widow, or children for a dead man? Was the deceased’s brother the only acceptable levir, or could that role be filled by any male kinsman? What options did a childless widow have, and what role, if any, did she play in choosing a new marriage or sexual partner? What role did the deceased and/or the widow’s extended family play in choosing or rejecting a levirate union? These are some of the questions that can be asked about levirate in Jewish tradition, but they can also be asked about levirate in general.

This chapter considers levirate as an institution, in preparation for considering levirate in ancient Israel and then in rabbinic Judaism. It attempts to define levirate and identify variations in the way levirate is practiced. It also considers the reasons that cultures may employ levirate, and the nexus between levirate and other concerns within a given culture. In analyzing levirate as an institution, the chapter also considers the tension between the desires of individuals—levirs and
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widows—and the expectations of the extended family regarding obligations to the dead.

Scholars have often resisted comparisons between Israelite culture and other cultures, or at best have preferred to restrict their comparative work to cultures that lived in close proximity to Israel. This method would suggest that to better understand levirate in ancient Judaism we might investigate levirate in the ancient Near East and consider responses to the death of a childless man in the Roman Empire and Babylonia during Late Antiquity. I will in fact consider these issues in later chapters. However, I believe that a broader cross-cultural consideration of levirate will enrich our understanding of Jewish constructs of that institution.

The ancient Israelites did not invent levirate, but they undoubtedly adapted it to their needs. In the post-biblical period, the rabbis continued to adapt levirate to reflect changing family structure, marriage practices, and inheritance law. An analysis of levirate in other cultures, including anthropological studies of levirate in the twentieth century, when we have not only laws but ethnographic information and interviews, may help us understand how levirate interacts with and responds to broader cultural concerns. This in turn could help us in our investigation of rabbinic laws and cases, where cultural concerns and human reactions to levirate situations are often not explicit but must be teased out of texts.

While rabbinic sources discuss levirate at length and in great detail, pre-rabbinic sources provide little information about levirate. The extant biblical passages provide minimal information about levirate law and mention one or two incidents of levirate unions. Outside of the Hebrew Bible, we have no data on levirate in ancient Israel. Although cross-cultural analysis has its limitations, and great variation may exist between ancient Israel’s use of levirate and the employment of levirate in other places at other times, a broader survey of levirate may shed light on levirate in a Jewish context. By comparing and contrasting levirate in ancient Israel and early Judaism with levirate in other societies, we may be able to pinpoint the social and economic concerns that underpin levirate in Israel and understand the changes in levirate described in rabbinic texts.

My work in this chapter relies on a number of studies of marriage in
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general, as well as studies of marriage and widowhood in various societie in Africa and Asia. Some of the studies are based on recent ethnographic and anthropological research, while others are based on older work. I appreciate that these studies reflect different approaches to anthropology and ethnography, and that some of the earlier studies may now be considered outdated in their approach to their subjects. I have not used any of these studies to make definitive statements about levirate in Jewish tradition; rather, I am interested in considering variations in levirate and the dynamics of the relationship among the individuals affected by levirate.

Defining Levirate
All marriage systems include “sets of rules . . . to govern the establishment, continuance, and dissolution of marriage. . . . They also include rules concerning the holding and transmission of property or status.” Levirate is employed by cultures when it promotes values that are central to that culture, concerns that are evident in multiple aspects of the culture’s marriage system. It is often possible to correlate aspects within a marriage system; levirate may be one of a number of characteristics shared by certain marriage systems, and these shared characteristics may indicate shared values.

In *A History of Marriage Systems*, G. Robina Quale defines levirate as

treating the sons sired by a deceased husband’s brother as the sons of the deceased. The term is also used, however, to describe husband-succession, or having the wife’s sons by a second husband inherit the estate of the first (sonless) one, as well as sharing in the estate of their actual father with any other sons he might have had by other wives. The term is even used to refer to widow-inheritance, or merging the estate of a sonless deceased husband with that of a second kinsman-husband.

Another scholar argues that all levirate unions have three common characteristics. “[T]hey are usually with a husband’s kinsman (although non-kinsmen and maternal nephews may sometimes be levirs with the permission of the kin group); they are socially recognized as legitimate; and the children are considered to be the descendants of the deceased and not the levir.”

[3]
These definitions of levirate alert us to a sharp distinction between levirate as generally constructed and levirate in rabbinic Judaism. In rabbinic sources, levirate is understood to be marriage, and the children of a levirate marriage are the heirs of their father, not of the deceased. These differences suggest either that rabbinic constructs represent a departure from earlier Israelite formulations of levirate or that levirate in early Israel was radically different than it was and is in most cultures. These definitions of levirate force us to ask pointed questions about levirate when we look at biblical texts, rather than to automatically project rabbinic readings of levirate back onto the Bible.

There are a number of practices that are sometimes referred to as or associated with levirate but that should be distinguished from it. One of these practices is widow-inheritance, a custom that assigns a man’s widows, together with his land and movable property, to his heir(s), usually his son(s) or brother(s). Another is ghost marriage, a practice that requires a man to take a wife and sire children on behalf of a kinsman who died before marrying. Widow-inheritance differs from levirate in that the children of the second union are regarded as the children of the new partner rather than of the deceased. In ghost marriage, the children are legally recognized as the offspring of the deceased; however, the woman involved in the union is not the deceased’s widow, but a previously unmarried woman. Some scholars distinguish between levirate and remarriage of a widow involving a kinsman of the woman’s first husband; in the latter, the second union is recognized as marriage and marked by marriage rituals, and the children of the union are legally recognized as the offspring of their genitor.

In post-biblical Judaism, levirate is treated as a form of marriage, but in many societies levirate unions are not, technically speaking, marriages; that is, levirate unions may not be marked by rituals and habits associated with marriage. In societies in which a man pays bride-wealth to his bride’s family, bride-wealth is not required for a levirate union. The levir is not legally the husband of the widow, nor are the children born to their union legally his. In some communities, the widow and the levir do not live together, and the levir and the widow may have no economic responsibilities to each other. When the children of a levirate union are regarded as the children of the woman’s deceased husband, the children will not be the levir’s heirs and he may have no financial obligations to them.
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While there are characteristics associated with all or most levirate unions, these unions vary from one society to another. In some cultures, levirate is mandatory; in others, levirate may be encouraged but not obligatory. In some communities, a man has the right to insist on a levirate union despite the objections of the widow; in other communities, it is the widow who may insist that her husband’s kin provide her with a levir or who may choose not to request or consent to a levirate union. A levirate union may be a permanent arrangement, ending only with the death of the widow or the levir, but some levirate unions are temporary. In some cases, the widow and the levir establish a household together; in others, the widow may remain in her deceased husband’s home while the levir visits. Levirate unions may be mandated for all widows, for widows of childbearing age, or only for the widows of men who die childless.

Against the backdrop of this information, rabbinic Judaism can be seen as employing levirate only in limited situations. Levirate is mandated only when the deceased left no children. Levirate can occur only when the deceased left a brother; no other male relative can serve as a levir. At the same time, levirate is a permanent union in Judaism and is entered into with the expectation that the couple will live together and that the man will have financial obligations toward the woman and the children born to the union. Again, information about levirate in other cultures may help us evaluate the ways in which rabbinic constructs of levirate are rooted in biblical law and the ways in which the rabbis may have reshaped older traditions, particularly given the paucity of information about levirate in the Hebrew Bible.

Levirate and Marriage Systems

Levirate is a widespread practice in traditional societies. Anthropological studies have recorded the use of levirate among peoples in North and South America, parts of Asia, Australia, Africa, and the Middle East. Societies that employ levirate tend to have a number of common features. While a culture may practice levirate without exhibiting all of these characteristics, it is unlikely that it will exhibit few or none of them. Furthermore, most cultures that exhibit all or most of these characteristics will practice levirate. Levirate reflects and promotes concerns that are also reflected in the characteristics described below.
Practitioners of levirate live in societies whose members are generally pastoralists or engaged in simple agriculture. They are usually patrilocal and patrilineal; married couples live with or near the husband’s family, and inheritance rights are determined through the father. In many of these societies, a husband obtains his wife by paying bride-wealth or offering bride-service to her family. A wife becomes part of her husband’s family at marriage or after she bears children, especially sons; she will have no inheritance rights in her family of origin and will often be unwelcome by her natal group in the event of divorce or widowhood. Levirate acknowledges the investment made by the husband’s family in acquiring the bride; while the man for whom she was acquired is now dead, the family has an interest in retaining her work and fertility for its members. Levirate also provides the widow with a place in her husband’s family in the event that she is no longer welcome in her family of origin. In some cases, then, levirate benefits both the dead and the living, providing additional children for the deceased, a partner and home among her dead husband’s kin for his widow, and a partner for an additional male without the need for bride-price. Since bride-price was often paid not by an individual but by his family, levirate may benefit not only individual family members, but the family as a unit.

Cultures that practice levirate tend to be exogamous; marriage within the clan or group is discouraged and sometimes forbidden. Exogamy reduces the chances that a man’s sister-in-law is also his blood relative, someone prohibited to him as a sexual partner. Endogamy, the practice of marrying within the extended clan or community, does not foreclose the possibility of levirate, but as we shall see in rabbinic texts, it may complicate the practice. Cultures that practice levirate are also often polygynous; a man may be married to more than one woman, while a woman is restricted to one husband. The practice of polygyny allows a man to marry or have an ongoing sexual relationship with his brother’s widow even if he is already married.

The inheritance customs of these communities reflect their patrilineality. There is an emphasis on lineage and on the preservation of the family property. In some societies, men inherit from their fathers. Others practice joint fraternal inheritance; property is passed down from one brother to the next; the next generation does not inherit until all of the grandfather’s sons are dead. Occasionally inheritance will be trans-
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mitted through the female line; a daughter's son may inherit from his grandfather when the grandfather had no sons. However, in most situations, women do not inherit property in patrilineal, patrilocal cultures, although they may be gifted with property upon marriage. Levirate may be closely linked to inheritance, with the surviving brothers “inheriting” the widow with her husband’s property or being expected to provide for the widow because she has no rights to her husband’s estate.

Levirate should be understood in the context of these factors. In societies with the features just described, a woman is transferred to her husband’s family at the time of marriage. She lives among her husband’s kin and is under the control of his family. She is expected to bear children for the clan; in some cases, only by doing so does she formally become part of her husband’s family. The death of a woman’s husband leaves her role in his family somewhat unclear, especially if she has not borne children. Levirate allows the family to “reassign” the widow, whose bride-wealth has often been paid by the family, to another man within the family. In some cases, this provides an unmarried man with a partner without necessitating the payment of bride-wealth. It also allows the deceased’s family to retain the widow as the caregiver of her young children or, in societies in which widows could return to their natal families with their children, to retain the children of the family’s lineage.

There are those who claim that levirate reflects the values of patriarchal cultures that regard women more as chattel than as persons. Following this approach, one can argue that

_levirate has its raison d’être in the view that a wife is the exclusive property of the [husband’s] family by virtue of the dowry or the brideprice that was paid for her. Hence the [husband’s] family is entitled to inherit her along with the other possessions of her deceased husband._

While this view does characterize societies that practice widow-inheritance and some that practice levirate, it cannot be attributed to all cultures that employ levirate. In some societies, levirate is optional rather than mandatory, and the widow has the opportunity to enter or reject a levirate union. In some cases, the husband’s family may woo the widow, because they wish to retain her as their daughter-in-law; she is regarded as a valuable member of the extended family. At the same time, soci-
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...ties that practice levirate are clearly patriarchal and exert significant control over the options of widows, whose choices are limited by custom and by inheritance laws that assign property to a man’s patrilineal relatives rather than his widow.

Ancient Israel features most of the characteristics just described. The Israelites engaged in simple agriculture. Israelite society was patrilocal and patrilineal. According to the Hebrew Bible, continuity of the family and preservation of familial land were important; inheritance was patrilineal, and wives were not recognized as their husbands’ heirs. The only characteristic absent from ancient Israel is exogamy; while the laws of Leviticus prohibit sexual relationships between various members of an extended family, marriage between cousins is permitted. Given the nature of Israelite society, it comes as no surprise that levirate was part of Israelite practice.

Clearly, levirate is a complex and varied institution. Different societies employ levirate unions to achieve different ends. It may be understood as an expression of concern for the deceased, particularly if he died without offspring, or it may be seen as a right accorded to his family. It is also possible to understand levirate as a society’s way of ensuring the protection and continued economic well-being of widows and fatherless children. In order to comprehend a culture’s understanding of levirate, we need to consider its construction of widowhood, continuity and inheritance, and kinship.

The Status of Widows

The status of and expectations for a widow vary from culture to culture. In some cultures, widows may have a variety of options; in others, their behavior is tightly circumscribed. The options open to widows reflect, in part, a community’s understanding of marriage. When marriage is first and foremost an arrangement between two individuals, the death of one spouse releases the surviving spouse from obligations to the deceased partner. A widow may be expected to observe a period of mourning as a sign of respect toward her deceased husband, but her legal obligations to him and to his family will end with his death. In societies that regard marriage as an agreement or alliance between two families, the death of a spouse may leave the surviving spouse with obligations to and/or rights in the family of the deceased.
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In some patrilocal societies, a woman whose husband dies returns to her family of origin. In many cases, however, a widow would have to return without her children; in a patrilineal society, the children are assigned to the husband’s lineage and remain with his family. A distinction might be made between sons and daughters, with the latter free to accompany their mother. A woman might be permitted to retain young children until they are weaned. In some cases, women have no right to return to their natal families if they are widowed or divorced; marriage transfers a woman from her family of origin to her husband’s family, and that transfer is absolute and permanent.

One option available to a widow is remarriage. Depending on the woman’s age, fertility, and financial situation, she may marry a man who has never been married or a man who has been divorced or widowed. In some communities, a widow is not considered an appropriate wife for a never-married man. In a polygynous society, a widow might be more likely to become a second or third wife than the first wife of a never-married man.

Remarriage of a widow may be tied to the concerns of her husband’s family. A man’s family might encourage his widow to remarry if they no longer wish to support her or have her in the house. In certain situations, a man’s parents might encourage their widowed daughter-in-law to remarry and bring her husband to their home to act as their son. A widow with children might be discouraged from remarrying to ensure that she will devote herself to raising her children. In some cultures, remarriage is seen as disrespectful toward the deceased husband; some widows are encouraged to withdraw from society and even to go into perpetual mourning.

Finances play a role in determining whether remarriage is desirable. In societies in which women receive no inheritance or dowry, a widow is left with no resources. If she has children, she might remain in her husband’s home and be supported by her children. She is unlikely to be sought in marriage by a man who would have to pay bride-wealth; such a man (and his family) would seek out a woman who has never been married. While the institution of the dowry ensures that a widow has funds, her husband’s heirs are often reluctant to pay out the dowry. In the event that a widow does not remarry, her children inherit her dowry. Some families encourage widows not to remarry to protect their children’s inheritance or to avoid returning her dowry.
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In societies in which marriage is seen as a “once-in-a-lifetime event” for women, remarriage is forbidden or strongly discouraged. A widow may be expected to remain single as a sign of respect toward her deceased husband; she may even be considered her husband’s wife after his death.22 In such societies, a levirate union may be a woman’s only opportunity to have a sexual relationship or economic support after her husband’s death.

When women have no property rights through their natal family and do not inherit from their husbands, the status of a childless widow can be especially precarious. A widow with adult children can usually depend on them for support. In societies in which types of work are gender-specific, an adult son might see his mother as a valuable worker. A widow with young children might be the de jure or de facto guardian of those children and, as their guardian, would be supported by her husband’s estate. A man’s family might encourage his widow to remain in the family enclave if she is caring for children who are part of the family’s lineage. A childless widow, however, has fewer options. Her husband’s property would revert to his father, brothers, or other male kinsmen. In some cases, she might not be welcome to return to her family of origin. In some cultures, a woman becomes a full member of her husband’s family only after she bears children (or sons). Her failure to provide children to her husband’s lineage would leave her in limbo when he died; she would be, in a sense, without a family, a disaster in societies where one’s economic rights were based on kinship ties. In such situations, a levirate union might represent a woman’s only opportunity to retain her place in her husband’s kinship group and thus have a home and economic security. As a result, even when the decision to enter or refuse a levirate union is theoretically the woman’s, a levirate union may be chosen not for its desirability but in the absence of viable alternatives.

Betty Potash found widespread practice of levirate among the Luo of Kenya; close to 90 percent of the widows she spoke with had been involved in a levirate relationship at some time after the death of their husbands.23 The Luo are a patrilineal and patrilocal group; men’s property is inherited by their sons, and adult men live on their fathers’ land. Most villages are populated by men who are agnates. Marriage among the Luo is exogamous and polygynous. A woman leaves her natal group
when she marries and goes to live with her husband’s family; she cannot return to her family of origin unless the bride-wealth is returned.24

Potash argues that levirate unions are not forced on Luo widows; a widow may choose to enter or avoid a levirate union, and she may choose which of her husband’s kinsmen will act as her levir.25 Nonetheless, most Luo widows choose to enter a levirate union. The preference for a levirate union may reflect a number of considerations. Women hold land rights, the right to farm a plot of land, only through their husbands. A widow has no right to take her children with her if she leaves her husband’s home; they are part of their father’s lineage and are expected to remain with his family. Returning to one’s natal family is not an attractive option for a widow and holds no promise of economic opportunity. Remarriage is not an option for Luo women, nor is it considered appropriate to take a lover outside of a levirate relationship. For childless widows, a levirate union is also a way to obtain children, and a Luo woman needs sons to support her in her old age.26

Among the Luo, the levir is usually a married man, often with children of his own. The widow and the levir generally do not live together; neither has social or financial obligations to the other. The levirate union may be temporary or even a pure formality. The children of the widow and the levir belong to the lineage of the deceased; the levir has no financial obligations to them. A man may serve as the guardian of his deceased brother’s property while the latter’s children are minors, but the widow farms her husband’s land and may manage the property as well.27

What, then, is the purpose of levirate among the Luo? The primary benefit to the widow is sexual; a levirate union is the only socially approved sexual relationship available to her. A secondary benefit to a childless widow would be the possibility of children, although the levir’s lack of obligation to provide support could leave a widow with the financial burden of supporting her children alone. There is no economic benefit to the levir, although he may occasionally receive some minor financial gain when the children of the levirate union marry. In some cases, an older childless man might take a young bride, knowing that even after his death she will provide children for his lineage. Overall, it seems that levirate unions are a way to provide a licit sexual outlet for pre-menopausal widows. The husband’s family has no incentive to
“keep” the widow, since they have the right to retain her children regardless of her decision and she has no claims on the family’s property. This might explain why Luo widows choose to enter into levirate unions. Regardless of how limited such a union might be, and how few benefits are conferred on the widow by virtue of entering into the union, the Luo women interviewed by Potash have no other options.

Economic factors are clearly involved in decisions regarding levirate unions. Like the Luo, the Nandi of Kenya are a patrilineal and patrilocal group. They are also polygynous. Marriage is considered a once-in-a-lifetime event for women; divorce is rare and cannot take place without the return of bride-wealth. Remarriage is not an option for women, and there is official communal disapproval of widows taking lovers outside of levirate unions. It is considered a man’s duty to enter into a sexual relationship with his brother’s widow if she is of childbearing age; the levir is expected to father children who are credited to his deceased brother’s lineage and to provide economic assistance to his brother’s widow and children.

Despite cultural similarities between the Luo and the Nandi, and shared social approval of levirate unions, Regina Smith Oboler found that few Nandi widows engaged in levirate unions.28 A number of factors may account for the avoidance of such unions. The Nandi are fairly prosperous and widows are often able to hire labor; thus they need not rely on the help of a levir. Significant property rights are assigned to Nandi women at the time of and during marriage; widows often have economic resources of their own. Despite official disapproval of widows who take lovers from outside their husbands’ kin, in reality such relationships have no social or economic consequences. All of a widow’s children, regardless of the identity of their genitors, are considered the children and heirs of her late husband. Given their greater economic and sexual freedom, Nandi women might understandably be less interested in levirate unions than their Luo counterparts.29

Levirate may be an attractive choice even for a widow with multiple options. In his study of Dukawa widows, Frank A. Salamone describes a society that is egalitarian, a community in which women are equal partners in marriage.30 While levirate is employed in Dukawa society, Salamone argues that it is by no means an indication of the powerless-ness of or lack of choices available to women.
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The Dukawa of Nigeria are patrilineal and patrilocal. Dukawa are generally monogamous, although polygyny is acceptable. Divorce is uncommon and regarded as undesirable. The Dukawa are endogamous; they marry only within the Dukawa community, and marriage is seen as an ethnic marker.

Marriage is often effected through bride-service that may stretch over a long period of time. While the bride-service is performed, the man and woman are regarded as husband and wife, although they are not formally married. They will engage in sexual intercourse and may have a child. Sexual compatibility is considered important in Dukawa society; a woman must consent to her marriage and may reject a prospective husband if she finds him sexually unattractive. A wife acquired through bride-service has high status among the Dukawa.31

The death of a husband, during or after the period of bride-service, leaves a Dukawa widow with a variety of options. She may return to her natal family, where she is welcome. While her father would support her, a Dukawa woman is capable of supporting herself. If the bride-service was not completed, children of the union are part of her natal family. If the bride-service was completed, she may take her unweaned children with her; while they are legally part of their father’s lineage, they may not return to their father’s family when they are older. Older children must be left with their father’s family.

It is the duty of a Dukawa brother-in-law to offer his widowed sister-in-law a levirate union. The levir incurs financial responsibilities to the widow and her children; the children of the union are accounted to the deceased’s lineage.32 The widow may accept or refuse the offer. A Dukawa widow has options other than a levirate union. She may return to her family of origin. She may marry any man she wishes. A Dukawa widow for whom bride-service was performed is considered a particularly desirable wife. Her children will be considered the children of her first husband; a subsequent husband may obtain rights to his biological children by performing bride-service for her first husband’s family.33

According to Salamone, it is often the husband’s family that encourages a widow to opt for a levirate union. The union guarantees the retention of the children of unions not yet sealed by the completion of bride-service and those still unweaned. A widow may consider her relationships with her prospective levir and her husband’s extended
family in deciding whether to accept a levir. She may bargain with her husband’s family; the family may offer the widow considerable financial incentives to remain with them. A Dukawa widow will presumably agree to a levirate union only when she sees it as the most attractive of her many options.

There are similarities and differences in the practice of levirate in Africa. In all three of the communities discussed here, a woman may, in theory, choose to enter into or avoid a levirate union and may select which of her husband’s male relatives will be her partner. Remarriage is not an option for Luo and Nandi women, but is an option for Dukawa widows. Dukawa and Nandi widows have greater economic power than Luo women. Dukawa women may also return to their natal families, unlike Luo and Nandi women.

Clearly, the possibility of remarriage, economic possibilities, and residence options play a role in women’s decisions regarding levirate. A Dukawa widow has many choices and may opt for levirate only when it is made financially attractive; a Luo woman may choose a levirate union despite its having no financial benefits, because she has few options. “Choice” is a subjective term here, since a woman’s choice will be influenced by the range of options she has.

Studies of the options available to and choices made by African widows indicate that levirate may be more attractive to widows under some circumstances than others. In theory, a widow’s options might not play into rabbinic levirate law, since women can be forced into levirate unions against their will; the choice to initiate or avoid levirate marriage is the levir’s alone. However, a community that allows the remarriage of widows might be less inclined to promote levirate, or force women into levirate unions. Furthermore, as we shall see, the rabbis of the talmudic period seem disinclined to force women into levirate marriages despite the law affording a woman no choice. Instead, the rabbis appear willing to take a woman’s preferences into consideration in carrying out the law.

Inheritance

Laws of inheritance provide for the distribution of an individual’s property after his or her death. Most societies have rules that govern inheri-
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tance. In societies in which levirate is practiced, it is intertwined with the societies’ assumptions about inheritance.

In contemporary Western societies, a wife is usually her husband’s heir; she may inherit the entire marital estate or inherit together with the deceased’s children. In such societies, widows become “independent” upon the death of their husbands. While circumstances vary from case to case, depending on financial and social factors, widows may choose their future courses of action.

In most societies that mandate levirate, a man’s male paternal relatives inherit his property. In some cases, a man’s sons are his heirs; in other cases, his property is transferred to his brothers. In the absence of sons or brothers, property devolves on other male kin, usually paternal uncles or cousins.

In such cultures, women tend not to inherit property. This is particularly true of wives, who are usually not their husband’s biological relatives. In societies that mandate dower, property settled on a wife by the husband at the time of marriage, a woman might receive her dower upon her husband’s death. In some cases, a childless widow might get her dowry, the money settled on her by her family at the time of marriage, when her husband dies. In many cases, however, these monies would have already been expended or might devolve on the children of the union, leaving the widow with little or no means of support.

A levirate union may provide for widows in societies in which a man’s sons or brothers, rather than his wife, are his heirs. Furthermore, when a man’s estate is small, a widow might be left with young children and no means to support them. Levirate or widow-inheritance ensures that

\[
on \text{a man’s death the obligation of maintaining his widow often} \]
\[
develops on his heir, the widespread custom of a man marrying the} \]
\[
\text{widow of his deceased brother being . . . not only a privilege, but} \]
\[
\text{among several peoples a duty incumbent upon him.}^{36}\]

There is another aspect of inheritance law that relates to levirate. In some cases, wives were seen as part of a man’s estate. A man might inherit his brother’s wives. In some cases, an adult son might inherit his father’s wives. In such circumstances, the son might be expected to support his father’s wives but forbidden to marry them. A son might even
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be permitted to marry his father’s wives, except for his own mother. In the event that a man died without sons, or in those societies where a man’s heirs were his brothers and not his sons, a brother might inherit and marry any or all of the deceased’s wives.

Widow-inheritance may reflect a number of assumptions or values. On one hand, it reflects the investment a man’s family may have made in his marriage. In societies that require that bride-price be paid by the groom or his family to the bride’s family, a man’s family often provided the wealth that enabled him to marry. In such societies, there is a sense that, having paid for the woman’s sexual and reproductive services, the husband’s family retains control over the woman even after his death. This allows for the transfer of the woman to her husband’s surviving brother. Insofar as levirate is understood to be a form of widow-inheritance, it assumes that women are chattel and can “be inherited like other belongings.” In some societies, a woman can avoid levirate marriage only if she or her family agrees to return the bride-wealth to the groom’s family.

The definitions of levirate mentioned at the beginning of this chapter underscore the ways in which a levirate union is used to determine rights of succession to family property. In communities that prefer “vertical” inheritance, the passage of property from one generation to the next, a man without sons lacks a preferred heir. In such cases, a man may employ various strategies during his lifetime to secure an heir. He may take additional wives or concubines. He may adopt his son-in-law or designate his daughter’s sons, his grandsons, as his heirs. He may adopt a son, choosing as his heir either an agnatic relative or a “stranger.” The strategy employed will reflect the values and kinship structure of the society.

If a man dies without children, levirate or ghost marriage may be employed to secure an heir for him. Assigning the biological sons of one man to his brother allows the sons of the former to inherit the latter’s property. A “successful” levirate union, one that produces children, re-establishes the “preferred” patterns of vertical inheritance; the man who died without offspring now has children to inherit his property. Thus in some societies, particularly those that mandate levirate only when a man dies without offspring, levirate is a device to preserve a man’s property by providing him with posthumous sons.
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The use of levirate primarily to provide a posthumous heir is evident among Hindus in India. “Widows present both ideological and economic challenges to the Hindu system.” Hindu tradition regards husband and wife as one body. It assigns to the wife the responsibility of protecting her husband; to that end, a wife performs various rituals to ensure her husband’s well-being. Ideally, a wife should predecease her husband. A woman whose husband dies is regarded as an “inauspicious” woman, one whose actions could not safeguard her husband. Furthermore, a widow requires financial support, since she may inherit little or no property from her husband and is restricted in her ability to earn income. An older widow may be supported by her adult sons. A young widow, or a childless widow of any age, presents a problem for society.

Hindu religious texts assume that a woman should have one sexual partner in her lifetime. In many regions of India, particularly in the north, remarriage is forbidden. Widows are expected to enter a permanent state of mourning, wearing distinctive clothing and eschewing the jewelry worn by wives. In other parts of India, widow remarriage is acceptable. Attitudes toward remarriage reflect regional preferences, but they also reflect caste. In some regions, higher caste groups refrain from remarriage, emphasizing restraint and purity, while lower caste groups permit remarriage. Among groups that practice remarriage, levirate may be employed when a man dies leaving no son.

In Hindu texts, levirate is referred to as nigoya (appointment). Early traditions indicate that nigoya was sometimes practiced while the husband was still living, enabling him to acquire an heir through his wife. In some texts, the wife is compared to a field owned by the husband; whatever crop grows in the field belongs to the owner, regardless of who sows the seed. Thus a husband is the social parent of a son fathered on his wife by his brother or another surrogate. The widow also benefits from levirate; the birth of a son improves her status, fulfills her obligations to her husband, and provides her with a source of support. The appropriate levir for a widow is her husband’s younger brother; this practice is referred to as junior levirate and may reflect a time when only the eldest son married.

Hindu texts reflect the tensions implicit in levirate unions. As Wendy Doniger points out:
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[O]n one hand, a man must never have sex with his brother’s wife; on the other hand, he must have sex with his brother’s wife if his brother is dead. . . . Legally and biologically, the person you most want to have sex with your wife, when you are dead, is your brother, because he has your genes. But psychologically, the last person you want to have sex with your wife, even when you are dead, is your brother, because of sibling rivalry.46

The understanding of paternity found in The Laws of Manu allows for the provision of an heir for a childless man through levirate. At the same time, Manu expresses disapproval of the practice. Manu is concerned that the surviving brother and a widow may have a sexual relationship not out of their sense of duty to the deceased, but because of sexual attraction;47 this concern is also voiced in rabbinic texts. Despite his disdain for the nigoya, Manu explains the justification for the practice and acknowledges that it will occur. Ideally, the relationship between the widow and her brother-in-law should be limited to the begetting of one son. This union is not intended to be a second, ongoing marriage for the widow; nor does it impede the levir’s marrying and producing children of his own.

Nigoya is seen as the obligation of a man to his deceased, childless brother. It also enables the widow to fulfill her obligation to provide her husband with a son. Nevertheless, the levir and the widow may be less than eager to fulfill this obligation. Until her husband’s death, a sexual relationship between a woman and her brother-in-law would have been unthinkable. Such a relationship, even when mandated by custom, may be problematic. A contemporary Indian novelist portrays such a relationship; the brother-in-law, who was raised by his sister-in-law, has difficulty consummating the union.48 The brother’s reluctance stands in opposition to the village council’s decision that it is his duty to take his brother’s place with his wife. For Doniger, this novel captures the inherent tension involved in the practice of nigoya, which is “simultaneously legitimate[d] and forbid[den]” in India.49

The availability of ancient texts, both legal and nonlegal, that discuss levirate, as well as contemporary fieldwork that considers the practice of levirate in India, allows us to see the evolution of attitudes toward levirate in a culture. Quale believes that in the centuries before The Laws of
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*Manu,* levirate may have been widely practiced and accepted in northern India; Jack Goody, too, notes the practice of levirate in Vedic times. Restrictions on levirate and on marriages within the extended family may reflect attempts to “weaken the potential power of patrilineages.” We see among the higher castes in India a view of marriage that would preclude the use of levirate as a way of obtaining an heir for a childless man. Marriage is seen as a lifelong union; remarriage by widows is considered unacceptable. This view of marriage would, by necessity, lead to a rejection of levirate as a “strategy of continuity.” An alternative strategy—adoption of a son or son-in-law—would replace levirate. A strong distaste for remarriage of widows could also preempt the use of levirate to protect the interests of widows or fatherless children; some other system would be developed. *The Laws of Manu* reflects the tension between an older practice—levirate—and a newer sensibility. That tension is reflected as well in the continuing practice of levirate among some castes despite its rejection by others.

In Jewish tradition, the remarriage of widows is never forbidden or criticized. While some rabbis were uncomfortable with levirate, that discomfort did not arise from a desire to restrict a woman to one sexual relationship in her lifetime. However, investigation of levirate in India does indicate that discomfort with levirate, regardless of the reason, may lead to a de-emphasis of or abandonment of the procedure and a search for alternative ways of achieving the goals of levirate. This realization will be useful in evaluating rabbinic reactions to levirate and any rabbinic discussions of other strategies for resolving childlessness or providing protection for widows.

Lineage and Paternity

In ancient Israel and elsewhere in the ancient Near East, levirate marriage was mandated only when a man died without children. In the majority of societies that practice levirate, levirate is mandated even when a man is survived by children. In these societies, levirate provides the deceased with additional children, even though that may not be its main purpose. The children born of the levirate union are legally the children of the deceased. In such situations, levirate distinguishes between the genitor, the biological father of a child, and the pater, the father recognized by law.
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While paternity can now be biologically determined through DNA testing, pre-modern societies had different ways of assigning paternity. Paternity was often assigned by proximity or legal ties; a man who lived with a woman was accepted as the father of her children, and the children of a married woman were legally assumed to be her husband’s.\(^{34}\)

Paternity can be assigned to a man who is clearly not a child’s biological father. In such cases, the rights or responsibilities of the biological father can be set aside or superseded. The most common method of “creating” or reassigning paternity is adoption. Through legal adoption, the rights and obligations of the biological father can be assumed by another man.

In some societies, paternity can be assigned away from the genitor in order to provide heirs for other men, or even for women. The Nuer of Sudan practice levirate and ghost marriage. The former assigns the children of a man’s widow and his brother to the deceased and is mandated whether or not the deceased had children. Ghost marriage is practiced on behalf of a man who died before marrying; a relative will take a wife on behalf of the deceased. In both situations, the children are credited to the deceased rather than the genitor.\(^{55}\) The rights of the deceased supersede those of the genitor, who is expected to have progeny that will be accounted to him with his own wife or wives. Communities may even be willing to accept a woman as the legal “father” of children. Some groups in sub-Saharan Africa practice “woman-marriage”—an arrangement whereby a woman may arrange for another woman to have children for her. The first woman is regarded by the children as their “father,” since she provided the bride-wealth that allowed their mother to give birth to and raise them.\(^{56}\) The Zulu regard all of a woman’s children as her first husband’s, regardless of who actually fathers them.\(^{57}\)

The practice of levirate is closely linked to the assignment of paternity. It may reflect a society’s insistence that a husband is the legal father of his wife’s children, even after his death. It may also reflect a society’s emphasis on the importance of children to carry on a man’s name or lineage, to preserve his property, or to honor his memory. In most cultures, the designation of the deceased husband as the father of his widow’s children by the levir is the defining characteristic of levirate. This designation of paternity guarantees that levirate serves the interests of the dead, even if doing so makes levirate unattractive to the potential levir.
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In Chapters 4 and 6, we will see that rabbinic levirate law is characterized by the assignment of paternity to the levir rather than to the deceased. This characteristic distinguishes rabbinic levirate from levirate as practiced by most cultures. It also raises questions about the aim of levirate in rabbinic law, as this undermines the goals of levirate stated in the Hebrew Bible.

Conclusions

Levirate is widespread in traditional societies. The practice of levirate correlates with other features that help shape marriage systems; it is common in societies that are patrilineal, patrilocal, and patriarchal. Levirate may be practiced in a primarily monogamous culture, but it is more likely to operate in a polygynous society.

The practice of levirate varies from culture to culture. In some societies levirate is practiced only when a man dies without a male child, while in others women enter into levirate unions even when their husband is survived by sons. The choice to enter into a levirate union may be made by the levir or by the widow.

The role levirate plays in a marriage system also varies from community to community. In some cases, levirate appears to benefit the widow, who may gain a sexual partner and economic assistance in raising her children. In other cases, particularly when a man dies without children, levirate can be seen as benefiting the deceased, who, through the agency of his brother, is able to father sons from the grave. Even in such a situation, one can argue that levirate benefits the widow insofar as her place in a traditional society is enhanced by motherhood. Having sons may also ensure financial support for a widow.

Levirate unions are not necessarily beneficial to the levir, the man who takes over his kinsman’s widow. In most societies, the children of a levirate union are accounted to the lineage of the deceased; the levir has no social or economic claim to the children he fathers on the widow. Ironically, if the levir does not father children with his own wife or wives, he could find himself without heirs despite having sired children with his brother’s widow. As Wendy Doniger points out, levirate marriage may also place emotional stress on a brother, as it requires him to marry or have intercourse with a woman he previously regarded as forbidden.58
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A culture’s approach to levirate may change over time. Attitudes toward and willingness to engage in levirate unions may be influenced by a number of factors. The introduction of a new religion may bring with it new marriage practices. The decline of polygyny can have an impact on the practice of levirate. A shift in the community’s construction of marriage and sexuality may lead to a rejection of remarriage or new sexual unions following the death of a spouse. Changes in the economic status of women may affect the need for levirate in communities in which levirate previously provided for the needs of widows. A woman who can inherit property may not need the support of a levir or of sons. A transition from an economy based on simple agriculture to a cash economy may allow women to support themselves and their minor children without land rights previously restricted to men.

As we consider levirate in biblical Israel and ancient Judaism, we should keep in mind the complexities of levirate. To understand levirate, we need to pay close attention to the role it plays in a marriage and kinship system. While every society may approach levirate differently and use it to achieve different goals, the information we have about other groups’ practice of levirate may shed light on ancient Jewish law and custom.
Levirate from the Hebrew Bible Through the Mishnah

The preceding chapter explored levirate as an institution that exists in various forms in many cultures. This chapter focuses on levirate as an institution in early Judaism. It considers discussions of levirate in the Hebrew Bible, in literature from the Second Temple period (515 BCE to 70 CE), and in the earliest rabbinic literature, particularly the Mishnah. Using levirate as a lens, subsequent chapters will look at rabbinic constructs of the family and specific relationships between family members. This chapter establishes the nature of that lens.

Any discussion of levirate in Judaism must begin with the Hebrew Bible. While much of the Hebrew Bible reflects early Israelite society and religion, rather than later, post-biblical Judaism, ancient Jews regarded the Hebrew Bible as the basis of their religion. All later Jewish legal material regarding levirate is based, or is presented as being based, on the Bible. The early rabbis’ discussions of levirate arise from its mention in Deuteronomy, and their attempts to tease out its application to specific situations are often justified through interpretation of biblical phrases.

Furthermore, the Hebrew Bible is one of the primary sources of discussions about the family in ancient Israel. As scholars have acknowledged, the problems of using biblical material for such a study are sig-
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significant. Still, the intersection between levirate and other aspects of family law in Judaism can best be considered by first studying the document that is the earliest source of Jewish law.

This chapter begins with an analysis of four biblical passages: Deuteronomy 25:5–10, Genesis 38, Leviticus 18:6 and 20:21, and Ruth 3–4. Two of these passages, Deuteronomy 25:5–10 and Genesis 38, discuss levirate marriage, one in a legal context and the other in the course of a narrative. The incest laws in Leviticus may inform later rabbinic restrictions on levirate marriage. While I disagree with scholars who claim that the marriage between Ruth and Boaz is a levirate union, I believe the issues raised in Ruth are germane to rabbinic concerns about levirate marriage.

There are many theories about the dating of biblical books and the traditions found within them. Dating is relevant in a discussion about a biblical law insofar as it allows scholars to hypothesize about the evolution of law in ancient Israel. As we shall see, scholars disagree about the history of levirate marriage in ancient Israel and see each or some of the biblical passages just mentioned as representative of different stages in the law’s development. Although I will discuss some of these theories, I am aware that for the rabbis of Late Antiquity, the Bible was a seamless whole. Rather than trace inconsistencies between biblical passages to different authors or historical periods, the rabbis sought to harmonize the texts. Thus while establishing the chronology of biblical texts and their relationship to each other is a valid and useful endeavor, it is not my goal here. Instead, I will analyze the texts, seeking nuances that will help clarify the rabbis’ understanding of levirate marriage, an understanding that they seek to ground in the Bible.

Levirate Marriage in Legal Texts: Deuteronomy 25:5–10

The law regarding levirate marriage is found in Deuteronomy 25, between the directive “You shall not muzzle an ox while it is threshing” and the directive to cut off the hand of a woman who seizes a man by his genitals to save her husband. The law is outlined in six verses and simultaneously argues for the importance of levirate marriage and acknowledges that such a marriage may, in at least some cases, never be realized:
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When brothers dwell together and one of them dies and leaves no son, the wife of the deceased shall not be married to a stranger, outside the family. Her husband’s brother shall unite with her: take her as his wife and perform the levir’s duty. The first son that she bears shall be accounted to the dead brother, that his name may not be blotted out in Israel. But if the man does not want to marry his brother’s widow, his brother’s widow shall appear before the elders in the gate and declare, “My husband’s brother refuses to establish a name in Israel for his brother; he will not perform the duty of a levir.” The elders of his town shall then summon him and talk to him. If he insists, saying, “I do not want to marry her,” 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! And he shall go in Israel by the name of “the family of the unsandaled one.”

Deuteronomy 25:5–10 is both succinct and tantalizingly oblique. Is the phrase “When brothers dwell together” simply setting the scene, or is levirate marriage an issue only when brothers share property or live on adjacent lands? It is not clear whether the deceased left no children at all or only no male children. The text reads “and leaves no son (ben).” Given that a man’s name and clan were perpetuated through the male line, we might assume that the word ben is to be understood narrowly. This reading gives rise to another question. Deuteronomy assigns only the firstborn child of the levir and the widow to the deceased; was this understood to be a reference to a son as well? If so, what was the status of daughters born to the levir and the widow before the birth of a son? If additional sons were born from the levirate union, to whose lineage were they assigned?

We are left to guess the levir’s motive for refusing to marry his sister-in-law and provide offspring for his brother. Is he reacting against marriage to this particular woman, or is he reacting against the implications of the levirate marriage itself? How is the widow affected by her brother-in-law’s refusal? What is the significance of her role in this drama? The ceremony of shame is enacted on the levir by his sister-in-law in the
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presence of the elders; the language of the ritual suggests that the widow represents her deceased husband, the acknowledged victim of the levir’s refusal. Does the widow also represent the community, whose expectations the levir has scorned? Does her assigned role in this very public ceremony also acknowledge her pain and anger at being rejected? Why does the woman remove her brother-in-law’s sandal?

According to Deuteronomy, the primary goal of levirate marriage is to provide the deceased with an heir.8 Deuteronomy focuses on the needs of the deceased, but levirate marriage may have fulfilled other needs within Israelite society. The brother-in-law would acquire a wife without the need to pay a bride-price (mohar). Another beneficiary of levirate would be the widow. While women could inherit their husbands’ estates in many parts of the ancient Near East, this was not the case in ancient Israel.7 A widow with children could expect her children to provide for her. If a man died childless, his estate reverted to his brothers or other male kin;8 in these circumstances, a widow would be left with no source of support. Levirate marriage would ensure a childless widow a home and the possibility of children.9 One scholar argues that it was the bearing of children that truly made a woman part of her husband’s family.10 The death of her husband left a childless widow in an awkward position in her husband’s home; levirate marriage thus “reaf­firms the young widow’s place in the home of her husband’s people.”11

One can argue that levirate marriage benefits several parties: the deceased, the brother-in-law, and the widow. Still, the words of the widow in Deuteronomy 25 underscore the primacy of the deceased’s need for an heir.

Deuteronomy acknowledges that in some cases “a man does not want to marry his brother’s widow.” The man himself need offer no explanation; he may simply state, “I do not want to marry her.” Since the purpose of levirate marriage is to provide an heir for the deceased, the levir’s refusal is treated as a refusal to honor his obligations to his brother. The widow appears before the elders complaining, “My husband’s brother refuses to establish a name in Israel for his brother.” A similar charge is made in the declaration that accompanies the act of halitza: “Thus shall be done to the man who will not build up his brother’s house!”

Why might a man refuse to marry his brother’s widow? One could
argue that levirate marriage is a completely altruistic act on the part of a brother. A man has little or nothing to gain and a great deal to lose by providing his brother with a posthumous heir. The death of a childless man would result in larger portions of the paternal estate going to the surviving brothers. Levirate marriage, if “successful,” results in the original distribution of property being maintained. Furthermore, the “loss” incurred by the levir comes through a child he himself has fathered; the levir is disinherited through his own actions! The only incentive Deuteronomy offers the levir is couched in negative terms; by agreeing to perform levirate marriage, he spares himself—and his descendants—public humiliation.

Although the widow cannot force her brother-in-law to marry her, the biblical text does not portray her as a passive party to the ritual. In some ways, the levirate widow is an anomaly in Deuteronomy. Most of the women in Deuteronomy are defined by their relationships to men; they are the daughters, wives, mothers, and female slaves of the men to whom Deuteronomy’s laws are addressed. Furthermore, these women are silent. Even the engaged girl who is raped in the countryside is only assumed to have screamed; her cries are never heard. While the levirate widow of Deuteronomy 25 is of interest because of her relationship with the deceased and his brother, she is not described as a dependent woman. Her brother-in-law’s refusal to perform levirate marriage allows her to act: she goes to the elders and complains; she accuses and then publicly shames her brother-in-law. Of all the women in Deuteronomy, she alone has a voice, even if she employs that voice on behalf of her husband and/or her community. Indeed, as we shall see, biblical texts portray women as strong advocates of levirate marriage and other unions that promote the continuity of the patriarchal family.

Deuteronomy 25:5–10 both mandates and provides an exemption from levirate marriage. The casuistic law at Deuteronomy 25:5–6 establishes that when “brothers dwell together” and one brother dies childless, the surviving brother should marry the widow in order to provide the deceased with an heir. However, the subsequent verses acknowledge that an unwilling man need not marry his brother’s widow. The passage leaves readers with questions about the circumstances that dictate levirate marriage and whether levirate marriage was likely to occur even when it was mandated.
Levirate in Narrative Texts: Genesis 38

Levirate is central to the narrative of Genesis 38, the account of Judah and his daughter-in-law Tamar. Judah's oldest son, Er, dies without children, leaving Tamar a widow. Judah orders his second son, Onan, to “join with your brother's wife and do your duty by her as a brother-in-law, and provide offspring for your brother.” Onan does not wish to “provide offspring for his brother”; although he does have sexual intercourse with Tamar, he does so in a way intended to prevent conception. After Onan's death, Judah is reluctant to allow his third son, Shelah, to marry Tamar, fearing that Shelah “too might die like his brothers.” Eventually, Tamar realizes that Judah has no intention of allowing Shelah to marry her. She disguises herself as a prostitute and seduces her recently widowed father-in-law. A few months later, Judah learns that Tamar is pregnant and sentences her to death. She informs him that he is the father of her unborn child. Judah acknowledges her claim on him, and the story ends with Tamar giving birth to twin sons.

Like Deuteronomy 25, Genesis 38 suggests that levirate marriage was not the inevitable outcome when a childless man died. Onan resists fulfilling his levirate duty; he is apparently willing to marry Tamar but not to impregnate her. Onan does not feel obliged to provide offspring for his dead brother; rather, the Bible explicitly acknowledges that he does not wish to provide Er with a child. Although Judah's order to Onan indicates a commitment to levirate marriage, his resolve weakens when his second son dies; Judah's desire to protect Shelah is greater than his sense of duty to Er. The only character thoroughly committed to the consummation of some sort of levirate union is Tamar. Like the widow of Deuteronomy 25, Tamar is given a voice; after the deaths of Er and Onan, Tamar becomes her own advocate. What is unclear is whether Tamar acts to preserve her husband's name and lineage or whether she acts to preserve her connection to Judah's family. Regardless of Tamar's motivation, the author of Genesis 38 validates her actions while condemning those of the men around her.

In Deuteronomy 25, the levir's refusal to marry his brother's widow is not explained; he simply does “not want to marry her.” In contrast, we are told why Onan refused to fully consummate his union with Tamar. He is motivated by the knowledge that “the seed would not count as
his.” Onan is unwilling to father children for his deceased brother. In Deuteronomy 25, the community and the widow voice their disapproval of the levir’s choice. In Genesis 38, there is clear narrative disapproval of Onan’s refusal to provide his brother with an heir; we read, “What he did was displeasing to God, and God took his life as well.” Judah himself acknowledges the injustice he committed in withholding Shelah from Tamar, but there is no indication that he believes the injustice was perpetrated against the deceased; it is Tamar whom Judah identifies as the righteous, that is, wronged, party.

There are differences between the practice of levirate marriage mandated in Deuteronomy and the events described in Genesis 38. In Deuteronomy, the brother of the deceased is responsible for carrying out levirate marriage; in Genesis, it is Judah as the father of the deceased who makes—or avoids making—the arrangements for the levirate union. Deuteronomy 25 presumes a scenario in which there are only two brothers, one deceased and one living; Genesis 38 suggests that if there are multiple surviving brothers, the levirate obligation can devolve on each of them in turn. Genesis 38 offers no mechanism to dissolve the levirate bond; we are left with the sense that Tamar might be forced to remain a widow in her father’s household indefinitely, unable to marry outside of Judah’s family. Finally, Genesis 38 suggests that, in lieu of a brother, another male relative might serve as the surrogate for the deceased.

There are scholars who argue that Genesis 38 reflects an earlier stage of levirate law in ancient Israel than does Deuteronomy. In this earlier stage, a father could impose levirate marriage on his surviving son or sons, and refusal to perform levirate marriage was punishable by death. In this reconstruction, the laws of Deuteronomy would indicate a “softening” of the law; there is now a choice between levirate marriage and public humiliation, and the choice is now the brother’s, not the father’s.

I am reluctant to read too much into the differences between these two passages. One is framed as casuistic law, whereas the other mentions law or custom in the context of a story. Many of the differences can be explained as incidental. In Genesis 38, Judah was alive and functioning as the head of his family. In many cases, the need for levirate marriage might not arise until after the father’s death and thus would be left to the surviving brother. Judah’s role as surrogate for his deceased son.
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Er is hardly portrayed by Genesis 38 as “normative.” Most important, Genesis 38 is focused on Judah; it is his actions that are central to the greater narrative context, for he will emerge later in the narrative as the spokesman for his father and brothers. This consideration could explain his central role in the levirate unions discussed in Genesis 38.22

Like Deuteronomy 25, Genesis 38 offers multiple perspectives on levirate marriage. Tamar and, to a lesser extent, Judah see levirate marriage as the proper response to Er’s death. On the other hand, Onan’s actions and Judah’s refusal to allow Tamar to marry Shelah indicate that men are not always willing to promote levirate marriage. The end result of Tamar’s actions—the birth of Perez and Zerah—indicates that levirate marriage can ensure family continuity, although it is not Er’s or Onan’s line that is preserved, but Judah’s. At the same time, the circumstances around Tamar and Judah’s union underscore the potential problems inherent in levirate marriage. The focus on Tamar’s manipulation of Judah and the assignment of her sons to Judah rather than to Er might lead the reader to conclude that the primary aim of levirate marriage is providing offspring for a childless widow rather than for her deceased husband.23

The Problem of Incest: Leviticus 18 and 20

Two passages in Leviticus detail forbidden sexual relationships. Many of the forbidden relationships involve two individuals related by blood or by marriage. Included among those relationships are unions between a man and his sister-in-law:

*Do not uncover the nakedness of your brother’s wife; it is the nakedness of your brother.*24

*If a man marries the wife of his brother, it is indecency. It is the nakedness of his brother that he has uncovered; they shall remain childless.*25

Commentators are aware of the apparent contradiction between the incest laws in Leviticus and the injunction to perform levirate marriage in Deuteronomy 25. One solution is to assign these laws to different circumstances: the laws of levirate would apply when a man died childless, whereas the prohibition against a union between a man and his brother’s wife would apply in cases of divorce or when the brother died
leaving children. The irony of the punishment laid down in Leviticus 20:21 is clear: a man enters into a levirate union for the express purpose of having a child, but a union between a man and his sister-in-law for any other purpose will be childless. Onan’s fear that his children will be credited to Er only underscores the irony; a “successful” levirate marriage might still leave the levir “childless,” insofar as the child he fathers on his sister-in-law is not accounted as his.

The Book of Ruth

Scholars disagree as to whether the events described in Ruth 4 relate to the institution of levirate marriage. While according to Boaz, in Ruth 4:10, the marriage will “perpetuate the name of the deceased upon his estate,” the marriage of Ruth and Boaz does not seem mandated by the law at Deuteronomy 25:5–10, nor does the genealogy in Ruth 4 credit Ruth’s son to her deceased husband’s line. In some ways, the transactions described resemble the redemption process for property outlined in Leviticus 25. However, there is no indication in Leviticus that a relative who redeems property should also marry the widow of the deceased kinsman to whom the property belonged; in fact, there is no indication in Leviticus 25 that the original owner of the property is dead. The situation in Ruth 4 does resemble a custom similar to levirate marriage, widow-inheritance, a custom through which a man’s heir inherits his widow together with his property. Even if what is under discussion in Ruth 3–4 is not a levirate union, it is worth considering here, because concerns raised by the unnamed redeemer in Ruth 4 could certainly apply to a levirate marriage as well.

In the Book of Ruth, Ruth’s marriage is seen as the solution to two problems, a dead man’s lack of offspring and the need to provide support for two widows. It is interesting that the former motivation is voiced by a man, whereas the latter concern is attributed to a woman. Naomi promotes her daughter-in-law Ruth’s marriage to Boaz so that Ruth might have a home and “be happy.” While Naomi may also be concerned about providing an heir for her dead son, she does not mention this concern. Even when Naomi raises the possibility that she might marry and have sons whom Orpah and Ruth could marry, her concern is for the comfort of her daughters-in-law, not the preservation of the line of her deceased sons. Naomi is portrayed as having different concerns
than Tamar, whose primary motivation seems to be producing a child. It is Boaz who claims that the acquisition of Ruth along with her husband’s family’s estate reflects the need to perpetuate Mahlon’s name. Boaz declares that he is acquiring Ruth “so as to perpetuate the name of the deceased upon his estate, that the name of the deceased may not disappear from among his kinsmen and . . . his home town.”

As in Genesis 38, there is reluctance on the part of the preferred man to fulfill his responsibilities to the deceased. Elimelech’s closest relative is willing to redeem Elimelech’s property, but he is unwilling to do so if he must also marry Ruth. His objection is phrased as concern for his own property; he says, “I cannot redeem it . . . lest I impair my own estate.” In the mind of the relative, marriage to Ruth, which “perpetuate[s] the name of the deceased upon his estate,” somehow threatens the redeemer’s own inheritance; he might expend his own capital or energy on an estate that will eventually be inherited by a child “belonging” to someone else. Boaz is willing to marry Ruth, perhaps because of his previous dealings with her and his esteem for her. The child born of this union is recognized not only as Ruth’s son but also as Naomi’s redeemer; bereft of her sons, she again has a descendant.

The Bible thus offers two stories in which a union with a relative’s widow plays an important role. Both stories underscore the reluctance of men to enter into such unions. While acknowledging that reluctance, the Bible in no way condones it. In each case, the Bible offers support for the union, suggesting that the fears of men regarding this custom are groundless. Onan does not wish to provide a child for his brother. Tamar’s sons, while conceived to fulfill the demands of levirate marriage, are always identified as Judah’s, suggesting that the fear voiced by Onan need not be realized. The unwilling redeemer of Ruth 4 is reluctant to marry Ruth lest he mar his own inheritance. As if in response, the townspeople who witness Boaz’s declaration of intent call out, “Proper in Ephrathah and perpetuate your name in Bethlehem.” Boaz’s act in no way compromises his stature. Like Judah, he is recognized as the father of the child born through an irregular union. Furthermore, it is the men who refuse to do their duty to the dead who endure the fate to which they would have condemned others: childlessness or the loss of name in Israel. When Onan is mentioned after Genesis 38, the reader is reminded that he has no descendants.
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he is nameless, the Bible’s reminder of his refusal to preserve the name of the dead.\(^39\) No man incurs a disadvantage from performing levirate marriage, nor does refusal to do so bring any benefit. At the same time, the end result in both cases differs from the ostensible goal of levirate marriage; the lines of Er and Mahlon are not preserved.

The Bible and Levirate Marriage in Ancient Israel

To what extent do biblical texts suggest an evolution in the practice of levirate marriage in ancient Israel? Can we argue that different texts testify to different stages of the law? Was levirate marriage less likely to occur at a later period in Israel? If so, can we assume that the decline of levirate marriage indicates a de-emphasis on continuity or a shift in strategies of continuity? Can we determine what factors might have contributed to the decline of levirate marriage?

Eryl Davies argues that Genesis 38, Deuteronomy 25, and the Book of Ruth represent three stages of legal development in levirate.\(^40\) According to Davies, Genesis 38 testifies to an early period in Israel, when levirate marriage was required and when the obligation fell not only on the brothers of the deceased but on other male kin as well. Deuteronomy 25:5–10 narrows the levirate law by imposing the levirate duty only on the deceased’s brothers. Furthermore, the phrase “When brothers dwell together” may have further limited the law, applying it only when two or more brothers shared the ancestral estate rather than dividing it after their father’s death. In the period reflected by Deuteronomy 25, the practice of levirate is nonobligatory; the levir may refuse to marry the widow without incurring punishment and without giving a reason for his refusal.\(^41\) Davies sees the story of Ruth as representative of a third stage in the evolution of levirate law. Levirate marriage is no longer obligatory and refusal evokes no ceremony of shame. In addition, levirate marriage can now be performed by more distant relatives, possibly in reaction against the restrictions of Deuteronomy.

We should be cautious about establishing legal chronology on the basis of these texts. Many scholars dispute Davies’s reading of Ruth, arguing that the custom being enacted in Ruth 3–4 is not levirate marriage. Furthermore, while Davies’s chronology reflects scholarly dating of J and D as well as Ruth, we cannot be so precise in dating individual traditions within these documents. It is also problematic to argue that
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the shaming ceremony described in Deuteronomy had been abandoned in the post-exilic period when Ruth was written, given the attestation to the halitza ceremony in the Second Temple period and beyond. Similarly, the parameters of levirate marriage, specifically the practice of limiting the levirate duty to the brothers of the deceased, are attested to in the Second Temple period. It is difficult to imagine the law described in Deuteronomy being abandoned or radically altered in the early Second Temple period, only to be reintroduced within a generation or two.

Although we may not be able to establish a legal chronology with regard to the law of levirate, there are indications that the practice of levirate marriage was already weakened by the time biblical texts such as Deuteronomy 25 and Genesis 38 were composed. As I indicated earlier, levirate marriage or widow-inheritance is often practiced even when a man leaves children. The restriction of levirate marriage to a case in which the deceased was childless may represent a limitation of the practice in early Israel. Restrictions such as those implied by “When brothers dwell together” further limit the scope of the law. The willingness to allow a man to refuse a levirate union, with no justification and possibly for purely selfish reasons, also suggests a weakened commitment to the institution.

Was family structure in ancient Israel conducive to the institution of levirate marriage? Could the weakening of the institution reflect the weakening or absence of institutions that are usually part of a marriage system that includes levirate? The ancient Israelite family features many of the characteristics common to cultures that employ levirate. Early Israel was an agrarian society. Biblical texts and archeological evidence support the claim that Israelite families were compound families, with several generations living together. Families were patrilocal and patrilineal, with women leaving their families of origin upon marriage. There are indications that the Israelites were endogamous, preferring marriages within the extended family or clan. Such marriages are privileged in the patriarchal narratives. Endogamy is useful in patrilocal societies because women from within the extended family are most likely to adapt well to life with their husbands’ parents and siblings.

In such a society, individual identity is overshadowed by family identity. An individual sees himself first and foremost as a member of his family and defines himself by his role(s) within the family. In such a
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society, levirate might represent the sense of duty of the deceased’s family to his childless widow or the desire to retain a woman acquired with family funds (in the event a bride-price was paid) for another member of the family. A man might accept levirate as his obligation to his deceased brother. In the compound family, the older generation had considerable authority; if the parents of the deceased were still alive, they could pressure a surviving son and the widow to enter into a levirate union. Genesis 38 and Ruth 3 suggest that parents and in-laws might influence decisions regarding levirate or marriage. A widow, having left her natal family upon marriage, might look on her husband’s family as hers and wish to remain with them, accepting a levirate union as a way to reestablish her role as wife and potential mother within her husband’s family. Since a widow did not inherit any part of her husband’s estate, levirate also provided support for a childless widow. Levirate, then, is a reasonable strategy for ensuring a man’s continuity and for providing for widows, as well as allowing a family to retain a woman who might contribute to the household economy.

Joseph Blenkinsopp argues that the rise of the monarchy led to a weakening of the family in ancient Israel. He points out the focus on centralized worship in Deuteronomy, together with the censure of local shrines, some of which may have served families or clans. He also notes that some of the laws in Deuteronomy limit the power of the head of household in dealing with members of his household and discourage ancestor worship. Blenkinsopp claims that the state may have had an interest in strengthening the nuclear, monogamous family while weakening the extended family, presumably to better empower the state.

If Blenkinsopp is correct, these measures may have had some impact on levirate. Scholars tend to portray the family in ancient Israel as a unit built around a monogamous couple and their offspring. While polygyny was legal, it was probably an option only for the wealthy and for royalty, who used multiple marriages to cement political alliances. Biblical narratives suggest that polygyny might have also been employed when the first wife was barren, but there are no indications that the practice was widespread.

While individual instances of levirate marriage need not lead to polygyny—the levir might be a single man when his brother dies—polygyny is a common feature of a marriage system that advocates le-
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Levirate marriage. In communities where polygyny is rare, levirate may come to be regarded as undesirable. If this is the case, there will be more resistance to levirate marriage. If indeed polygyny was infrequent in ancient Israel, there may have been a weakening of receptivity to levirate unions.

As the nuclear family becomes more important, the influence of the extended family over the individual presumably decreases. This might weaken the bonds between adult siblings and the influence parents exert over their adult children. We have already seen that men might be reluctant to enter into levirate unions; the weakening of bonds between brothers would do nothing to encourage men to perform levirate. Parents, portrayed by Genesis 38 and Ruth 3 as potential promoters of levirate, might have less sway over reluctant sons and daughters-in-law.

Levirate Marriage as a Strategy of Continuity in Ancient Israel

Throughout the Bible, we see that childlessness was a source of pain and shame to both men and women. Biblical characters express anxiety when they are unable to have children. They employ various strategies to obtain children; these strategies include prayer and surrogacy. Polygyny or the union of a married man with a woman of lower status may also be a means to ensure continuity.

The Bible also indicates a desire to preserve family property. While the preferred heir is a biological son, other strategies of continuity involved adoption and designating daughters as heirs in the absence of sons. The responsibility for preserving family property extended to a man’s paternal kin. Marriages within the clan and the redemption of a man’s property by his paternal kin were strategies that kept property within a kinship line.

Levirate marriage can be a powerful strategy of continuity. While polygyny and concubinage allow a man to maximize his potential to procreate, levirate marriage allows a man to father offspring even after his death. To the extent that ancient Israelite society saw the continuation of a man’s lineage and the maintenance of family property as desiderata, levirate marriage could have been an extremely beneficial aspect of the Israelite marriage system.

At the same time, biblical texts suggest that the ancient Israelites, particularly Israelite men, may have been somewhat less than enthusiastic...
Levir from the Hebrew Bible Through the Mishnah

astic about levirate marriage. Both Deuteronomy and Genesis indicate a resistance on the part of men to levirate marriage. Deuteronomy allows a man to avoid levirate marriage without incurring physical or financial injury. Women are portrayed as the strongest advocates of levirate marriage. Perhaps providing for widows rather than securing offspring for the deceased had come to be seen as the primary benefit of levirate marriage. If so, we can understand why biblical women are seen promoting levirate marriage while biblical men seem less concerned about the institution.

Biblical texts offer a mixed portrait of levirate marriage in ancient Israel. On one hand, the law in Deuteronomy 25 and the story of Judah and Tamar indicate that levirate marriage was known in ancient Israel and that it may have served the same function or functions in Israelite society that it did elsewhere. The texts suggest that women and some men saw levirate marriage as a desirable response to a childless man's death. At the same time, the texts underscore the reluctance of men to enter into levirate marriages. Concern for the self trumps fraternal loyalty. However unpleasant the shaming ceremony described in Deuteronomy 25 might have been, it offered a formal, legal escape for the unwilling levir.

We cannot know what role levirate marriage actually played in pre-exilic Israelite society. We can be certain that traditions concerning levirate became part of the Hebrew Bible. As such, they would be seen by later Jewish exegetes as sources of law and guides for appropriate behavior. In the second part of this chapter and in subsequent chapters, I will consider how these texts were interpreted by Jews in antiquity and how these interpretations shaped Jewish law regarding levirate marriage.

Levirate in Second Temple Literature

There is very little mention of levirate in Jewish literature from the Second Temple period. Philo does not mention levirate marriage. In his discussion of inheritance, Philo states that "if the deceased had no descendants, [his] brothers must proceed to the succession, for brothers rank next in tables of relationship with sons and daughters." Philo is following the order of inheritance found in Numbers 27:8–11 and does not discuss the possibility of producing a posthumous heir through levirate.

Josephus does discuss levirate, praising it as an institution that preserves families and benefits widows:
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When a woman is left childless on her husband’s death, the husband’s brother shall marry her, and shall call the child that shall be born by the name of the deceased and rear him as heir to the estate; for this will at once be profitable to the public welfare, houses not dying out and property remaining with the relatives, and it will moreover bring the women an alleviation of their misfortune to live with the nearest kinsman of their former husbands.\(^57\)

It is unclear what Josephus means when he claims the child born of levirate marriage shall be called “by the name of the deceased.” He could be alluding to a naming custom, whereby the child would be named for his dead uncle. The “naming” here could also be the assignment of the child to the deceased as his heir; vis-à-vis inheritance, the child is regarded as the son of the deceased, not of the levir.

The beneficiaries of levirate, according to Josephus, are widows and the community; another beneficiary is the deceased, whose “house” will now continue. This explains why the response to a man’s refusal to marry his brother’s widow leads to a shaming ritual; he is, according to Josephus, “doing outrage to the memory of his deceased brother” and carries the “reproach” of the community “throughout his life.” The levir has an obligation to his brother, his widowed sister-in-law, and his family; failure to meet this responsibility is condemned by the community, regardless of his reason.\(^58\)

Levirate is touched on in passing in several portions of *The Testaments of the Twelve Patriarchs*. In *The Testament of Zebulon*, the patriarch alludes to levirate law in recounting the sale of Joseph by his brothers. The brothers’ willingness to abandon Joseph is compared to a levir’s refusal to provide offspring for his brother.\(^59\) In both cases, a man’s action (or refusal to act) is described as distinctly nonfraternal.

The treatment of the story of Judah and Tamar in *The Testament of Judah* glosses over the issue of levirate, focusing instead on Judah’s sinful behavior. Judah blames his sons’ deaths and his own refusal to give Tamar to Shelah on his Canaanite wife.\(^60\) The patriarch emphasizes that intercourse with Tamar, his daughter-in-law, was “an abomination” that he never repeated.\(^61\) There is no mention of the birth of Tamar’s children; Judah addresses his words to Shelah’s children, making no mention of sons by Tamar.\(^62\)
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Levirate is also mentioned in the three synoptic Gospels. In each of these gospels, Sadducees challenge Jesus, positing a case in which seven brothers are successively married to one woman, each succeeding the other through an act of levirate marriage. The Sadducees ask Jesus which of the brothers the woman will be married to in the hereafter. Neither party to the exchange is concerned with levirate per se; the challenge revolves around the question of bodily resurrection and is deflected by Jesus’ argument that there will be no marriage after resurrection and it will thus be unnecessary to determine which of the brothers will be married to the woman.63

Levirate Law in Rabbinic Literature

In contrast to the minimal discussions of levirate in the Bible and in Second Temple literature, rabbinic discussions of levirate dominate an entire tractate of Mishnah and of Tosefta. Mishnah Yevamot comprises sixteen chapters, the majority of which focus on levirate; the remaining chapters deal with other aspects of marriage law, particularly as it applies to the priestly caste. Although matters relating to levirate are discussed in other parts of the Mishnah, those discussions are ancillary; a study of Yevamot offers the reader an in-depth introduction to a rabbinic understanding of levirate.

Mishnah-Tosefta Yevamot focuses on identifying those situations in which levirate may take place and those situations in which levirate is forbidden. One chapter deals with halitza, the ritual of release enacted when the levir chooses not to marry his widowed sister-in-law. The laws in Mishnah-Tosefta Yevamot rely on exegesis of Deuteronomy 25:5–10, but the rules in the tractate go far beyond the information provided by the Torah.

The model of levirate offered by tannaitic sources and assumed by the Talmuds is based on the notion that the death of a childless man creates a bond between his widow(s) and his brother(s). The bond is created only when there are suitable widows and brothers, individuals who can legally marry and who are potential parents.64 The levirate union does not require betrothal, and it is unclear whether it is accompanied by wedding rituals like huppa (wedding canopy) or marriage blessings.

The opening chapters of Mishnah Yevamot outline three possible responses to the death of a childless man who is survived by at least one wife and one brother:
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They offered a general rule regarding the yevama [lit. “sister-in-law,” this term is used for the widow of a childless man]: Any yevama who is forbidden [to her levir] because of consanguinity does not perform halitza nor does she enter into levirate marriage. If she is forbidden because of a prohibition on account of a commandment or a prohibition on account of sanctity, she may perform halitza but may not enter into levirate marriage. If her sister is also her sister-in-law, she may perform halitza or enter into levirate marriage.65

The first two chapters of Mishnah Yevamot detail situations in which neither levirate marriage nor halitza is required, owing to the relationship between the levir and the yevama. In such cases, the preexisting relationship prevents the formation of a levirate bond. The third chapter considers cases in which a levirate bond is formed, but marriage between the levir and the yevama is impossible; in such cases, halitza is the only option.

The fourth chapter of Mishnah Yevamot discusses the actual terms and conditions of levirate marriage. It assigns the responsibility for levirate marriage or halitza to the oldest surviving brother, but acknowledges the right of any brother to fulfill the levirate obligation.66 It considers the status of the levir and the yevama if they marry or perform halitza only to discover that the yevama is pregnant.67 To avoid such a situation, the Mishnah requires a three-month waiting period between the husband’s death and any action regarding the levirate obligation.68 The waiting period leaves the yevama in an ambiguous state, necessitating a discussion of her power to manage her property.69

The Mishnah teaches that should a man marry his brother’s widow, “she is like his wife in every way.”70 A man has the same rights and responsibilities toward a wife taken in levirate marriage as he does with regard to any wife. The only difference involves the marriage contract. In the event of divorce or the levir’s death, the woman’s marriage portion is paid from the estate of the first husband, in recognition that it was the first marriage that necessitated the second. The levir who performs levirate marriage receives his deceased brother’s estate; if any one of the brothers performs halitza, the deceased’s estate is divided among all the surviving brothers.71 The Mishnah also considers the legal relation-
ship between a man and a woman who have undergone halitza; they are treated like a divorced couple in that they may not marry each other’s close relatives.72

A childless man may leave several wives and several brothers. The Mishnah treats the surviving wives as a unit; if one is forbidden to enter into levirate marriage or perform halitza because of her close relationship to the levir, all the other wives are likewise exempt. If one wife marries her husband’s brother or performs halitza, the status of all her co-wives is resolved and they are free to remarry. Any definitive act involving one brother and one yevama is conclusive, unless the individuals involved were not eligible for levirate marriage or halitza or were legally incapacitated.

According to the Mishnah, levirate marriage can be concluded through an act of intercourse, even if that act is nonconsensual or not undertaken for the purpose of formalizing the marriage.73 Both the Mishnah and the Tosefta assume that intercourse should be preceded by a declaration of intent by the levir.74 This declaration is similar to betrothal and requires the consent of the woman. While the act of declaration is mentioned repeatedly, the Tosefta acknowledges that intercourse effects levirate even when no declaration was made.75

The twelfth chapter of Mishnah Yevamot details the proper procedure for carrying out halitza. Part of the procedure involves giving the man advice as to whether he should perform levirate marriage or halitza. The Mishnah refers to such counseling as “advice that is fitting for him” (eitza hahogenet lo). The chapter focuses on various aspects of the halitza rite, including removal of the levir’s sandal, the widow’s spitting at the levir, and her declaration that the levir refuses to perform levirate marriage.

What emerges from Mishnah Yevamot is a focus different from that of Deuteronomy 25. The goal of levirate marriage, as described in Deuteronomy, is the birth of an heir for a man who dies without offspring. The Mishnah’s focus is on clarifying the status of that man’s widow. Ordinarily, a widow is a “free” woman, that is, she is free to remarry, and no man has the right to control her sexuality or her property. She has a legal claim on her husband’s estate and is treated like a creditor with regard to her marriage settlement.76 Until she collects her settlement, she is entitled to support from her husband’s estate.77 A levirate widow is un-
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like a “normal” widow in that her freedom to remarry is compromised by her bond with the levir; this bond may also affect her right to control her property. In contrast to other widows, the levirate widow cannot demand her marriage settlement; in some sense, the estate, as represented by the deceased or his brother(s), has a claim on her rather than the reverse. The Mishnah seeks to clarify when such a levirate bond exists and how that bond can be formalized through levirate marriage or dissolved through halitza. The levirate widow is then transferred from her liminal state to a “normal” state, whether that status is “wife” or “widow.” After halitza, the yevama is treated like any other widow, in that she may remarry and collect her marriage settlement from her husband’s estate, which is inherited by his male kin, his brothers, or his father.

Because the Mishnah views halitza as a “solution” to the levirate bond, its understanding of halitza differs from that set forth in Deuteronomy. The Torah presents halitza as a means of mortifying a man who neglects his familial responsibilities. While the acts that comprise the rite as described in the Mishnah may be embarrassing for the levir, the sages are focused on the rite’s effect on the woman, not its efficacy in encouraging the levir to perform levirate marriage. The Mishnah understands halitza to be a vehicle for establishing the status of a levirate widow. It apparently sees no shame in a man’s deciding to perform halitza rather than levirate marriage. On the contrary, because in some cases levirate marriage is not possible, halitza is often the only way to resolve the levirate obligation, to clarify the woman’s status and allow her to marry again.

Just as biblical discussions of levirate offer no information about the frequency of levirate in ancient Israel, the laws of the Mishnah cannot answer questions about the extent to which levirate occurred in Late Antiquity. Scholars are divided on this question, some asserting that levirate was practiced in the tannaitic period and others arguing that it was not. However, I see no evidence of clear, consistent privileging of levirate marriage or halitza in early rabbinic literature. Although it is true that there are references to individual rabbis who supervised halitza but few references to cases in which rabbis oversaw couples entering into levirate unions, such evidence is inconclusive; a levirate union does not require judicial approval or intervention, while halitza does. A more nuanced approach to the texts suggests that the tannaim

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Levirate saw both levirate marriage and *halitza* as acceptable responses to the levirate bond, and that the *amoraim* were divided, with the Palestinian rabbis preferring *halitza* and the Babylonian rabbis preferring levirate marriage. These preferences speak as much to the social climate of the Roman Empire and Sasanian Babylonia as they do to internal concerns of the Jewish community, reflecting, I argue, marriage patterns and strategies of continuity among non-Jews and Jews. Our discussions of rabbinic texts, then, will not focus on how they do or do not reflect the marriage choices made by “real” Jews in Late Antiquity. Rather our focus will be on the ways in which the rabbis who wrote these documents understood “family” and the impact levirate law might have on families and their individual members.

Rabbinic discussions of levirate clarify some of the ambiguities present in the biblical text. The Mishnah understands the phrase “When brothers dwell together” not as an attempt to limit levirate to situations where brothers share a family estate, but as an exclusion of brothers born after the death of the levirate widow’s husband. The rabbis’ understanding of “son” (*ben*) is expansive, eliminating the need for levirate if the deceased left any descendants. The status of all children born of a levirate union is the same; all are assigned to the levir and are treated as his legal offspring.

**Conclusions**

Deuteronomy 25 serves as the basis of rabbinic constructs of levirate. While Genesis 38 and Ruth 3–4 leave open the possibility that a kinsman other than the deceased’s brother might marry the widow, levirate law in the Mishnah and the Tosefta restricts the levirate obligation to a man’s brothers and further limits levirate to brothers with a common father. The opening chapters of Mishnah Yevamot suggest that the incest prohibitions in Leviticus 18 and 20 have more impact on rabbinic constructs of levirate than do the narratives found in Genesis 38 and Ruth, insofar as the Mishnah restricts levirate marriage when it would involve a union between two closely related individuals.

The main actors in levirate are, according to Deuteronomy 25, the levir and his widowed sister-in-law. The elders of the community play a role in both Deuteronomy and Ruth, serving as witnesses in both cases and as a disapproving chorus in the former. Genesis and Ruth sug-
gest the possibility of involvement of the extended family, particularly the parents of the deceased, and acknowledge that multiple surviving brothers or other male relatives may have an interest in resolving the status of the levirate widow.

Mishnah Yevamot focuses on the levir and the widow, positing a bond between them and proposing ways to resolve that bond. While it never considers the part that parents might play in a levirate situation, the Mishnah does hint at the entanglement of the extended family in levirate. The opening chapters of Mishnah Yevamot imagine families in which marriages between relatives multiply the roles individuals may play, leading to situations in which a levirate union would be incestuous. The Mishnah also posits situations in which several brothers may marry sisters, simultaneously binding two families more closely together and making levirate difficult if not impossible to carry out. These scenarios, however improbable, suggest that levirate is not only a union between two people, but an act that can have an impact on the couple’s extended family or families as well.

Levirate is a valuable lens through which to explore rabbinic definitions of family. It focuses on the smallest family unit, a potential husband and wife, but also requires consideration of much larger family units, multiple brothers, multiple wives, families joined through marriage, and families created through both blood and marriage simultaneously. It also considers the obligations of individuals to their family members, both living and dead, as well as the tensions between those obligations and the choices an individual might make for his or her own benefit. With this in mind, we now turn to our exploration of rabbinic constructs of the family.
Mapping the Family

The death of one of its members can throw a family into disarray. In the case of a childless couple in a traditional patriarchal society, the death of the husband leaves his wife alone among his extended family with no kinship ties to that family and no claim on its property. Furthermore, the man’s death leaves a gap in the family that should have been filled by a son. Levirate offers a solution to these problems. The deceased’s wife can be transferred to his brother, and they can have a child who will be assigned to the deceased.

This solution, however, requires the brother and the widow to redefine their relationship, shifting from a relationship in which sexual relations between the two are forbidden to one in which they are permitted, and in fact encouraged. In some societies, the shift is not accompanied by new roles; the levir remains the woman’s brother-in-law and she remains the wife of the deceased. In Judaism, the new relationship is marked by new roles for the man and the woman: he ceases to be her brother-in-law and becomes her husband; she is no longer his sister-in-law but his wife. The family that was fractured is now reconstituted, with the hope that this new configuration will eventually include what the previous one lacked: offspring who can ensure the continuity of the family.

This reconfiguration of the smallest unit within an extended family may affect more than the two individuals called on to enter into a levirate union. If the levir is already married, his wife and his sister-in-law
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may now find themselves sharing a home and a husband. If the deceased left several brothers, there may be some disagreement as to the disposition of his widow and property. The older generation may want their son to marry his sister-in-law, or they may not. The widow’s family of origin may prefer that she return to them or marry into another family, or they may hope that she will remain part of her late husband’s family. While the rabbis’ treatment of levirate focuses on the levir and the widow, the impact of their decision will be felt throughout the family and may be influenced by the ties that already exist between them and among members of their families.

This chapter considers the ways in which rabbinic Judaism constructs family. It argues that families are complex institutions that may comprise smaller units embedded within larger units, or a large network that can be divided into many, sometimes overlapping parts. Each part, whether multiple generations of individuals who can trace their lineage to a single male ancestor or a married couple, is considered a family unit. At the same time, I will argue that while the rabbis acknowledged multiple constructs of family, they privileged one of the smallest units, what we now call the nuclear family, a unit composed of a husband, a wife, and their children. It is, I contend, the rabbis’ focus on this type of family that influenced their restrictive reading of levirate.

Today, many people use the word “family” without specifying precisely what they mean; the word is so common that we assume its meaning is known and requires no explanation. In fact, the word may connote a variety of configurations. A physician taking a family history from a patient may be concerned only with the patient’s parents, grandparents, and siblings, those whose medical history is most likely to shed light on that of the patient. A child attending a family reunion or wedding may be bewildered by the number of unfamiliar faces, asking her parents, “How am I related to these people?” A person may identify as his cousin an individual who in fact is not related to him by blood or by one marriage, but only through a complex network of marriage and patterns of family association. In short, we use the word “family” to describe many groups, often without modifying the word to indicate which “family” we mean.

In contemporary American usage, then, “family” is a broad term that can indicate various relationships. A person may speak of his family of
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origin, a unit usually consisting of parents and children, or the nuclear family that he has created as an adult; many people use the term to indicate both of those units and may intend to include a spouse’s family of origin as well. Family may also denote a more extended group, including an individual’s grandparents, aunts, uncles, and cousins. Today, divorce and remarriage are common, so a person may be including in the word “family” her stepparents, half-siblings, stepsiblings, unmarried partners of family members, former spouses of relatives, and so on. At times, close friends are spoken of as being “part of the family,” despite the absence of any ties of blood or marriage.

Within a family unit, an individual will have multiple roles. In the nuclear family in which an individual grows up, she may be a daughter and a sister; in the extended family, she is also a granddaughter, a niece, and a cousin. Upon marriage, an individual may be assigned new roles: wife, daughter-in-law, and sister-in-law. These roles describe a person’s relationship to a variety of individuals and can be played out concurrently. As we have already noted, levirate involves shifting and redefining an individual’s roles within a family. Presumably the extended family’s acceptance or rejection of those shifts may have influenced decisions made regarding levirate or its success as a strategy of continuity.

In the opening sentences of a chapter entitled “Kinship, Family and Descent,” Robin Fox observes that “kinship and marriage are about the basic facts of life. They are about ‘birth, and copulation, and death.’”

Levirate marriage features all three of these acts; a childless man’s death leads to the expectation that his brother and widow will have sexual intercourse with the goal of producing a child to carry on the deceased’s “name.” Although a levirate union takes place between two individuals, it represents an attempt to perpetuate a family. Furthermore, the relationships between individual family members—the deceased and his surviving brothers, the widow and her brother-in-law—determine, in part, whether the goals of levirate can be realized. Analyzing kinship structures, therefore, should help us understand rabbinic constructs of levirate; conversely, rabbinic discussions of levirate marriage offer some of the best data for analyzing kinship structures in rabbinic Judaism.

This chapter relies heavily on anthropological approaches to the study of family and kinship. I believe that anthropology offers scholars of rabbinic Judaism a valuable framework through which to discuss the
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family, ensuring that we use scholarly tools rather than impose our own notions of family on ancient texts. Following discussions of kinship by anthropologists, this chapter addresses several topics: terminology and systems of kinship nomenclature, incest, forms of marriage and marriage regulations, and descent. It then analyzes a series of rabbincic discussions about family and kinship, arguing that the rabbis recognized multiple types of families, each intertwined with or embedded in the others.

It is beyond the scope of this work to offer a full anthropological analysis of the kinship structure of ancient Judaism. Such a study might be impossible, given the types of data that are and are not available to us. Instead, this chapter is intended to bring the terminology and insights of anthropological studies on kinship to bear on our understanding of rabbincic discussions of family law, in particular the laws of levirate.

**Defining Family**

As indicated at the beginning of the chapter, the word “family” may be used to describe a variety of configurations. Descent may play into a person’s understanding of family, leading an individual to consider only his father’s or mother’s kin as his family or extending the term to the relatives of both parents. Upon marriage, a woman may leave her family of origin and be adopted into her husband’s family, or she may enjoy membership in both her natal family and that of her husband. A man may or may not consider his wife’s relatives part of his family. Understandings of who is inside or outside one’s family reflect and shape a community’s understanding of the rights and responsibilities that go along with membership in a family.

One term used in the Hebrew Bible to describe the relationship between related individuals is beit av. Translated as “the father’s house,” this term, according to Carol Meyers, “denotes the extended or compound family that inhabits a residential unit of several linked dwellings.” This unit was patrilocal as well as patrilineal; land was passed from a man to his sons, who would reside with their own wives and children on their ancestral land, while daughters left their families to live in the beit av of their husbands. Any given beit av could be an extended family, comprising several generations, or it might correspond to our contemporary nuclear family; the composition of a particular beit av


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would depend on the longevity or fecundity of its members at a particular time.

The term *beit av*, which Meyers sees as integrating implications about residence and descent, can also indicate descent alone. In Numbers 4, the term is used to express the way a tribe is subdivided. The Levites are divided into three clans (*batei av*), each associated with one of Levi’s three sons. The clans are then subdivided into units (*mishpahot*), each of which bears the name of one of the grandsons of Levi. At other times, the term *beit av* seems to be interchangeable with the word for tribe. ⁴

While the term *beit av* is used in rabbinic literature, the usage offers us little information on the rabbis’ understanding of the family. The term is used primarily in discussions of the organization of the priests for service in the Temple. The priests, according to the Mishnah, were divided into watches (*mishmarot*) that served in the Temple on a rotating basis; each *mishmar* was made up of six *batei av*. Discussions about the priests and proper priestly conduct suggest that the *batei av* were based on family ties. ⁵ The term is also used with a possessive *beit av* *hi*, “the house of her father,” to describe the physical residence of a woman before her marriage and/or her father’s control over her during her minority. ⁶ The term *beit av* is not used in rabbinic literature to describe non-priestly families. The term may have retained some of the familial-residential connotation it had in the Bible, at least for the priests, but it is not used in rabbinic literature to describe an extended family. ⁷

The Hebrew Bible also employs the word *mishpaha*, which in modern Hebrew means “family,” but the Bible’s use of the word appears to be much broader. The term *mishpaha* generally denotes a subdivision of a tribe (*mateh* or *shevet*). The precise relationship of the *mishpaha* and the *beit av* is unclear. The terms are used together when a census is taken. ⁸ The word *mishpaha* can be used more broadly to speak of entire nations, as in “all of the families of the earth.” It may also be used more narrowly, as when David requests permission to travel to Bethlehem to participate in a “family sacrifice”; this sacrifice may involve more than just his immediate family but need not include all of his father’s lineage.

Carol Meyers argues that *mishpaha* “is more than a family, although it may well be a grouping of related family units.” She sees the *mishpaha* as a “residential kinship group,” a group of related households that share a village. ⁹ N. P. Lemche, however, believes that the *mishpaha* has
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no residential basis and is best understood as “the enlargement of the kinship circle to include lineages related by marriage.” Neither Meyers nor Lemche associates the term with a single household comprising individuals related by blood or marriage.

The word *mishpaha* appears numerous times throughout rabbinic literature. In general, the term indicates an extended family or descent group. The Bavli contains twenty references to *b’nai mishpaha*, members of an extended family or clan. In Mishnah Bekhorot 8:10, Rabbi Yo-hanan ben Beroqa rules that a man should return land he inherits from his wife to her family in the Jubilee year. In this mishna, *mishpaha* would presumably mean the wife’s extended family on her father’s side (if she has inherited family land, her father has died, and she has no brothers). The Mishnah’s assumption is that the wife has inherited ancestral land that should revert to the original owners in the Jubilee.

In many cases, the word *mishpaha* is used in discussions about family pedigree. Commenting on Mishnah Taanit 4:8, which describes young women calling out to prospective husbands, “Pay attention to family (mishpaha),” the Bavli explains, “Those who had pedigrees would say, ‘Pay attention to *mishpaha*, for a wife is [chosen] only for children.” Elsewhere, rabbinic sources discuss *mishpahot* that traced their lineage back to named individuals or to individuals whose marriages may or may not have marred the family pedigree, making them ineligible to marry priests. The term is often used in construct with a name.

In conclusion, the word *mishpaha* can probably be best translated as “lineage” or “extended family,” conveying the sense of a group of individuals who trace their lineage to a common male ancestor. The word is not used in rabbinic literature to indicate shared household residence and is clearly not used to describe a nuclear family.

In the Hebrew Bible, the word *sh’eir* indicates close family ties, sometimes in conjunction with the words *haqarav eilav*, “the relatives who are close to him.” In Leviticus 18 and 20, the word is used in the delineation of incest prohibitions. In Leviticus 21:2, *sh’etro* is followed by a list of family members that includes parents, children, and siblings. In Leviticus 25, *sh’eir b’saro* describes relatives who might redeem a family member or family land. In Numbers 27:11, the phrase *sh’etro haqarav eilav* appears at the end of a passage outlining the order of inheritance. In the absence of children, brothers, or paternal uncles, a man’s property
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devolves on “his nearest relative in his own clan,” presumably a member of his patrilineage. These instances suggest that the word sh’eir indicates “kin” but does not connote specific relatives or types of relatives. Rabbinic citation of the term is minimal and focuses on the exegesis of biblical verses. In one instance, sh’eir is interpreted to support the inclusion of the wife in the list of relatives for whom a priest may mourn; in another, the term is cited to suggest that a father might take precedence over his son’s other heirs or to prove that a husband inherits his wife’s property. The rabbis do not adopt this term to describe relatives or kinship ties.

Overall, the Hebrew Bible acknowledges kinship on various levels, those of immediate family and extended family, but does not employ terminology that allows for absolute distinctions to be made between types of kin. Instead the Bible uses specific terms to describe individual relatives—for example, father and mother—and terms that indicate broad groups of individuals related by blood or marriage. The terminology does suggest an emphasis on the extended patrilineal family, presumably because descent and inheritance of land were determined by patrilineage. This terminology is sometimes employed by the rabbis to describe family connections among individuals.

Rabbinic sources employ several terms to speak of a household or a small family unit; these terms acknowledge the central role played by a male head of household. The Bavli uses the phrase ish u’veito, “a man and his house[hold],” in discussing the rituals of lighting Hanukkah lamps and in connection with the commandment to sound the shofar on Rosh Hashana. When explaining the phrase, the Bavli asks if the phrase refers to “a man and his wife”; elsewhere in the Bavli that phrase, ish v’ishto, is associated with “dwelling.” This narrow identification of the house with the wife rather than with all of the members of the household is reflected in the use of the Hebrew word bayit, “house,” and its Aramaic equivalent to mean “wife.”

A number of conclusions can be drawn from the terminology used by the rabbis to discuss families. The rabbis understood that individuals were often part of extended families comprising all of the descendants of a common male ancestor. An individual might also identify himself or herself as a member of two kindreds, one paternal and the other maternal. At the same time, the core family unit discussed in rab-
binic literature is the nuclear family, the family composed of a man, his wife, and their children. The tendency to use terms like “a man and his wife” when imagining a household suggests that while polygyny was permitted, monogamy was the rabbinic ideal and the norm. The use of the “wife as house” metaphor suggests that while an extended family might share a residence (especially when brothers jointly inherited a house from their father), married couples frequently did not live with the husband’s parents; it is difficult to imagine men referring to their wives as their “houses” if the house was occupied by several generations and the mother, not the wife, was often the senior female member of the family.\(^\text{20}\) The rabbis’ frequent use of the term *ba‘al habayit*, literally “the master of the house,” to describe an adult male indicates that establishing an independent household, separate from one’s parents, was one of the indications of adulthood for men.\(^\text{21}\)

**Kinship Terminology**

Societies as a whole and institutions within those societies organize human life. Within society and within the institutions of a society, individuals are assigned statuses and roles.\(^\text{22}\) According to anthropologist Ralph Linton, “A Status, as distinct from the individual who may occupy it, is simply a collection of rights and duties. . . . A role represents the dynamic aspect of a status.”\(^\text{23}\) An individual may have multiple statuses and a corresponding number of roles. A person’s status—or title—informs the person and those around him as to what is expected of and due to him.

Within a family, individuals have multiple statuses, each one describing the individual’s relationship to other members of the family. Statutes and roles are reciprocal; one person’s status as father presumes another person’s status as son or daughter. Attributing a status that conveys kinship bonds to an individual suggests that members of families have certain responsibilities to each other and can make certain claims on each other.\(^\text{24}\) The use of a term to indicate a particular relationship should tell us something about what that relationship means in a given culture. An analysis of kinship terminology, then, provides information about a culture.

There are four major kinship nomenclature systems. Each offers a different way of describing the relationships between an individual (re-
ferred to as Ego) and his kin. A kinship nomenclature system may equate some uncles and aunts with Ego’s parents while classifying others as “parents’ siblings.” This type of system, known as bifurcate-merging, is associated with unilineal groups, groups that trace descent through only one parent, whether the father or the mother. The classification of a father’s brother as “father” or the mother’s sister as “mother” leads to Ego’s classifying the children of these individuals as “brothers” and “sisters,” that is, members of his lineage like his own brothers and sisters. The children of Ego’s father’s sister or his mother’s brother are not part of his lineage and are referred to as “father’s sister’s children” or “mother’s brother’s children.” These distinctions have practical implications for incest prohibitions and marriage choices. Ego could not marry a cousin who was identified as a “sibling,” but marriage between Ego and his father’s sister’s daughter might be permitted or even encouraged.

Another type of kinship nomenclature system is the bifurcate-collateral system. This system, also known as the Sudanese system, refers to all uncles, aunts, and cousins by different terms, classifying them by their relationship to Ego’s father or mother. Not all patrilineal societies employ this system, but societies that do use it tend to be patrilineal. Other systems use lineal terminology, classifying all parents’ siblings as “aunts” and “uncles,” or generational terminology, referring to all parents’ siblings as “father” and “mother” and all their children as “siblings.”

Anthropologists disagree as to what can be learned from a society’s kinship nomenclature system. Some suggest that such a system reflects aspects of a society’s marriage system, indicating who may marry whom. Others argue that the terms reflect “relations” between members; if a father’s brother is termed “father,” it may be because he stands in relation to Ego like a father.

In discussing kinship terminology, anthropologists distinguish between referential terms and terms of address. The former comprise the terms that members of a group use to describe their relationships to various members of their family. The latter are the words used when one is speaking directly to specific family members. While some terms may function as both referential terms and terms of address, there may be differences in usage. A person might address a variety of male relatives as “uncle,” while referring to them in conversation as “my father’s
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brother” or “my mother’s sister’s husband.” In some cultures, non-family members may be addressed by terms also used for kin but may not be referred to that way in conversation with a third party.

An analysis of rabbinic kinship terminology must focus primarily on referential terms rather than terms of address. Most of the material that focuses on family relationships is legal and not dialogic; rabbinic literature contains few exchanges in which family members employ terms of address. Furthermore, these texts are not the work of cultural anthropologists recording exchanges among family members. They are carefully edited texts intended for an elite audience and cannot serve as evidence of the way Jews in Late Antiquity spoke to each other. Any discussion of kinship terminology in rabbinic literature, then, must focus on the referential terms that are used and what they suggest about constructs of family and kinship.

Rabbinic literature relies heavily on the lexicon of the Hebrew Bible for kinship nomenclature. This lexicon includes words that denote the primary relationships in a nuclear family: father, mother, son, daughter, brother, and sister. Most of these words can have a precise meaning indicating a biological relationship between two parties, as when Jacob’s sons, reporting on their encounter with the vizier of Egypt say, “But the man kept asking about us and our family, saying, ‘Is your father still living? Have you another brother?’” or when Abraham describes Sarah as “my sister, my father’s daughter.” The words can have a broader connotation, as when God promises Abraham that he will be “the father of many nations” or when Eve is described as “the mother of all living things.”

Relationships and roles created through marriage can also be acknowledged through the use of particular words or terms to identify spouses and in-laws. However, there are no words in classical Hebrew whose exclusive meanings are “wife” and “husband.” The word for woman, *isha*, can also mean wife, and the word for master or owner, *ba’al*, can indicate a husband. The term *eshet ish*, created by placing the word for woman in construct with the word “man,” always conveys the meaning of wife. Similarly the construct *ba’al isha*, literally “the master/owner of a woman,” means husband. Despite the absence of a unique term to denote the marital relationship, classical Hebrew has terms for the relationship between an individual and his or her in-laws: “father-in-law”
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(‘hoten), “mother-in-law” (‘hotenet or ‘hamot), “son-in-law” (‘hatan), and “daughter-in-law” (‘kalla).29 The relationship between in-laws of the same generation can also be indicated with single words; a brother-in-law and sister-in-law are described as a ‘yavam and ‘yevama;30 the three-letter root of the word, y-b-m, is used in discussions of levirate, the union between brother-in-law and sister-in-law. These terms are employed primarily when the issue under consideration is levirate marriage, but the terms occasionally refer to a sister-in-law when levirate may not be an issue.31

In Mishnah Yevamot 15:4, we learn that several female relatives of a woman’s husband cannot serve as witnesses to the husband’s death (such testimony would free the woman to remarry); among these women is “her sister-in-law” (‘yevimta). Although this could be viewed as a situation in which levirate might come into play—such testimony would render the woman subject to levirate if her husband had died without children—levirate need not be a factor here. The rule, together with similar groupings in Mishnah Gittin 2:7 and Sotah 6:2, suggests the assumption of animosity between a wife and her husband’s closest female relatives. Animosity or distrust between a woman and the wife of her husband’s brother may be rooted in concerns that the death of one of the men could result in the women becoming the co-wives of the surviving brother.

Most other familial relationships are indicated through compound terms. These terms are created by combining two or more of the words used to describe basic family relationships. Thus a grandfather may be described as “the father of one’s father” or “the father of one’s mother;” a grandson may referred to as “the son of one’s son,”32 and a granddaughter is called “the daughter of one’s son” or “the daughter of one’s daughter.”33 A cousin may be “the son of one’s uncle” or “the son of the brother of one’s father.” The use of compound terms acknowledges that family ties are built on the primary relationships between parents and children and among siblings; individuals are connected to extended family members through their common ancestors or connections. While the Hebrew Bible does use the terms ‘dod and ‘doda to describe an uncle and aunt (an uncle’s wife),34 it also employs parallel compound terms, for example, “the brother of the father” or “the wife of the brother of the father.”35 Cousins are always referred to by compound terms.

Rabbinic literature retains the terms used in the Hebrew Bible to describe family relationships. There are few variations between the kinship
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nomenclature of the rabbis and that of the Hebrew Bible. While the Bavli sometimes uses \textit{bayit} (house) or the Aramaic \textit{deveit’hu} (of their house) to mean “wife,” that term is not used in compound terms or in legal discussions about family relationships.\textsuperscript{36} In Rabbinic discussions of in-laws, there is only one of the sets of words that appear in the Bible; whereas the latter uses the word \textit{hoten} for father-in-law, the rabbinic term is \textit{ham}, corresponding to the feminine term for mother-in-law (\textit{hamot}) found in the Hebrew Bible and rabbinic literature.

As in the Hebrew Bible, rabbinic literature usually indicates extended family relationships through compound terms. While the Hebrew Bible uses the word \textit{dod} to refer to a man’s paternal uncle, in rabbinic literature the term is generally \textit{ahi ha’av}, the brother of the father; a parallel designation, \textit{ahi ha’em}, refers to a maternal uncle. An aunt is referred to as a “father’s sister” or “mother’s sister,” whereas an aunt by marriage is called “the wife of the father’s (or mother’s) brother.”

Several terms found in rabbinic literature to describe family members are not found in the Hebrew Bible. There are rabbinic terms for a stepson (\textit{horeg}) and stepdaughter (\textit{horeget}), although these individuals are also referred to by compound terms, “the son/daughter of one’s wife/husband.” There is also a term for a man’s wife’s sister’s husband: \textit{gis}. The term \textit{gis} is not used to describe other brothers-in-law; a man’s wife’s brother is usually referred as “the son of the father-in-law.”

The use of compound terms is a marker of a bifurcate-collateral kinship nomenclature system. The use of compound terminology offers clarity as to the nature of the relationship, distinguishing between paternal and maternal kin. While the term “uncle” can denote four different individuals, the terms “the brother of the father,” “the brother of the mother,” “the husband of the sister of the father,” and “the husband of the sister of the mother” are more specific. Furthermore, these compound terms indicate whether the relationship between Ego and the individual in question is based on paternal or maternal connections or is established through marriage. Compound terminology suggests a distinction between primary and secondary relationships. One’s primary relatives are one’s parents, siblings, and children. Other relationships are seen as coming through those primary ties; a person is related to her siblings’ children or her parents’ siblings because of or through her relationship to her siblings and parents.
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A spousal relationship is in some ways unique. It is worth noting that the biblical laws that determine for whom a priest may defile himself in mourning do not include the wife, although she is added to the list by commentators. A spouse is not one of Ego’s consanguine kin; whether lineage is unilineal or bilineal, a spouse is not technically part of that lineage. This is recognized in rabbinic discussions about inheritance. Wives are not their husbands’ heirs, and the right of a husband to inherit his wife’s property has to be proved by the rabbis through multiple acts of biblical exegesis, each of which is challenged in the Bavli.

Hebrew kinship terminology recognizes the importance of affinity by employing terminology to denote members of a spouse’s family of origin or a child’s spouse. Some of these terms allow Ego to reference his in-laws through a direct relationship, rather than referring to them as relatives of his wife or child—for example, “wife’s father” or “daughter’s husband.” Rabbinic tradition emphasizes the importance of the individual’s relationship to the spouse’s parents by requiring that honor be shown to in-laws as well as parents.

The employment of a word to describe the relationship between two men married to sisters—the use of gis to denote the husband of Ego’s wife’s sister—is interesting, especially given the use of a different, compound term to describe the wife’s brother. The word is derived from the verb g-v-s, meaning “to be familiar with.” The derivation suggests a special relationship between men married to sisters, a relationship that might emerge owing to a society’s understanding of closeness between sisters. The prohibition against a man’s marrying his wife’s sister in her lifetime—setting up a situation in which sisters may become rivals—suggests that closeness between sisters is natural and should not be put in jeopardy. That closeness may have lasted even after the sisters’ marriages and departure from their father’s home and could in turn have promoted a close relationship between their otherwise unrelated husbands. Mishnah Yevamot’s interest in cases of brothers married to sisters should be considered in this context.

The kinship terminology employed by the rabbis suggests a complex kinship system in which the closest relatives are identified by simple terms and members of the extended family are identified primarily by compound terms. Kinship through both parents is recognized and, at least vis-à-vis terminology, is treated equally. Affinal relationships are
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also marked by special terminology, suggesting that these were considered important relationships. The appearance of terms for a stepson and a stepdaughter may be a response to the occurrence of remarriage in rabbinic society; these relationships may also have had legal significance, as suggested by texts that describe a man’s taking on financial responsibility for his wife’s daughter from a previous marriage. The kinship terminology of the rabbis argues for a construct of family that is layered and that includes individuals connected through consanguinity and affinity.

Incest

Every society prohibits sexual relations between members of the nuclear family (parents and children, siblings) and some relatives outside that unit. There is great variation in the expansion of incest taboos beyond the nuclear family, and there is not necessarily a correlation between the degree of closeness between relatives and these regulations. Although anthropologists have proposed many theories for the emergence of incest taboos in human society, there is no agreement as to their origin. It is beyond the scope of this work to determine why the ancient Israelites prohibited certain relationships while permitting others; rather, we shall begin with the incest prohibitions recorded in the Hebrew Bible and expanded on by the ancient rabbis, and consider the implications for levirate marriage.

The incest taboos of the ancient Israelites are found in two places in the book of Leviticus. The prohibitions are presented from a male perspective, indicating those female relatives with whom a man may not have intercourse (see figure 1). The first of these lists is found in Leviticus 18. The general term for relatives in this chapter is sh’eir basar (relative, close flesh). A man is forbidden to engage in sexual intercourse with his mother, his stepmother, his sister, his granddaughter, his father’s sister, his mother’s sister, the wife of his father’s brother, his daughter-in-law, his brother’s wife, and the mother, sister, daughter, or granddaughter of his wife. Most of these prohibitions are reiterated in Leviticus 20. Neither Leviticus 18 nor Leviticus 20 prohibits a sexual relationship between a father and a daughter; this prohibition is understood by the early rabbis to be derived from the prohibition in Leviticus 18:17 against sexual relations with “a woman and her daughter” or a fortiori from the prohibition against intercourse with one’s granddaughter.
In the incest laws of Leviticus the term *l’galot erva,* “to uncover nakedness,” connotes sexual relations. At times, the addressee of Leviticus 18 is told not to uncover the nakedness of a female relative; at other times, the “nakedness” under discussion is that of a male relative whose wife is forbidden to the addressee. In rabbinic discussions, these prohibitions are extended in some cases to additional generations; for example, a man is forbidden to have sexual relations with his grandmothers. The prohibition against intercourse with a parent’s sister or an uncle’s wife is not extended to cousins; marriages between cousins are permitted.

Given the incest regulations in Leviticus, the institution of levirate in ancient Israel presents a paradoxical situation. According to Leviticus, a man is forbidden to have sexual relations with his brother’s wife; the repetition of the prohibition led exegetes to claim that it applies both during the brother’s lifetime and after his death.47 Leviticus 20:21 warns that the union of a man and his brother’s wife will be childless. In contrast, Deuteronomy 25 expects a man to marry the wife of his late (childless) brother for the express purpose of having a child who will carry on the name of the deceased. Post-biblical commentators see a contradiction between these two laws, acknowledging that contradiction in powerful terms.48 These two laws, Leviticus 18:16, 20:21 and Deuteronomy 25:5–6,

Figure 1. Prohibited sexual relationships (indicated by shading) [Leviticus 18 and 20]
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according to tannaitic midrash were “spoken [by God] at the same moment.” This overlapping enunciation, according to the rabbis, serves as an assertion that while the laws appear to be contradictory, they are in fact complementary. The rabbis resolve this contradiction by assigning the laws to two distinct situations: the laws of Leviticus apply when the deceased brother left children, whereas the law of Deuteronomy applies when the deceased had no children. The midrash mentions the Leviticus prohibition before the commandment of levirate marriage; although this order reflects the order of the laws in the Bible, we might also understand this to be an acknowledgment that the incest prohibition in Leviticus is primary, but is occasionally superseded by or set aside for levirate marriage. In other words, there are times when a man may be encouraged to enter into a licit (and divinely sanctioned) “incestuous” relationship.

The awareness that levirate is a type of sanctioned incest is evident in many discussions outside of the tannaitic midrash just mentioned. The Yerushalmi’s discussion of Mishnah Yevamot 1:1 considers the possibility that the obligation of levirate might override not only the prohibition against the brother’s wife but a broader range of incest prohibitions:

> It is written, “All who do any of these abhorrent practices shall be cut off” (Lev. 18:29). Was not the brother’s wife included in these prohibited relations? But she is removed from the category through [the obligation of] levirate. Is it possible that the remaining prohibited relations should be removed from the category through [the obligation of] levirate?

The same question is raised later in the discussion. After drawing an analogy between the wife’s sister and other prohibited relatives, the Yerushalmi asks:

> Rather than comparing all [other] prohibited relations to the wife’s sister and forbidding [levirate with these relations], why not compare them to the brother’s wife and permit [levirate with these relations]?

In both cases, the Yerushalmi offers exegesis that distinguishes between licit levirate, marriage between a man and his deceased brother’s widow when she is not forbidden on other grounds, and illicit levirate with a
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sister-in-law who is related to the surviving brother beyond her marriage to his brother. Still, these discussions underscore the problem inherent in levirate: not only is an otherwise forbidden union permitted, it is encouraged.

There appear, then, to be two types of “brother’s wife.” One type, married to a man with children, is forbidden to her brother-in-law, both during her husband’s lifetime, even if he has divorced her, and after his death. The other type, the widow of a childless man, is permitted to marry her brother-in-law; and in fact, it is his religious duty to marry her. This dichotomy, however, is complicated further by rabbinic discussions of eligibility for levirate marriage. The rabbis create a third category, in which a widow is related to her brother-in-law in a way that prohibits a sexual relationship between the brother-in-law and the widow’s co-wives. In the event that marriage does take place in such cases, the union is considered incestuous, even if it was intended to fulfill a perceived duty to the deceased.54

The intersection between the levirate obligation and the prohibition against incest arises several times in Bavli Yevamot. Levirate marriage between a man and his brother’s widow is expressly prohibited when she is a relative forbidden to him (beyond her status as his brother’s wife).55 Such a woman does not even require halitza; her status as his close relative eliminates any levirate obligation, and she is treated like a widow of a man with children. The opening mishna of the tractate goes further, extending the prohibition against levirate and halitza beyond the related widow to any other women to whom the brother was married at the time of his death. The mishna states:

Fifteen women exempt their co-wives and the wives of their co-wives from halitza and levirate marriage ad infinitum. They are: [his daughter, his daughter’s daughter, his son’s daughter, his wife’s daughter, her son’s daughter, her daughter’s daughter, his mother-in-law, the mother of his mother-in-law, the mother of his father-in-law, his sister by the same mother, his mother’s sister, his wife’s sister, the wife of his brother by the same mother, the wife of a brother who died before he was born, and his daughter-in-law.56

This list of women in Mishnah Yevamot 1:1 corresponds, in part, to the lists in Leviticus 18 and 20. The Mishnah extends the list, adding the
daughter, grandmothers-in-law, and stepmother-in-law. It omits mention of several women, because they would also have been forbidden to the deceased brother and thus would never be potential levirate partners.57 The rule stated in Mishnah Yevamot 1:1, however, extends the prohibition against a union far beyond those women. It posits that if A's brother were married to A's daughter or another woman who is forbidden to A, and at the same time had another wife who had no relationship to A beyond being his brother's wife, that brother's death without children would not necessitate levirate marriage. A cannot marry his daughter, nor, according to the Mishnah, can he marry her “co-wife,” his brother’s other widow.

On the surface, this prohibition seems surprising. The co-wife in question, after all, is not related by blood to A. She is related to him by marriage, but that, of course, is always true when levirate marriage is mandated! Why then should A be forbidden to perform levirate marriage or halitza with this woman?

Responding to the opening assertion of the mishna, “Fifteen women exempt their co-wives and the co-wives of their co-wives from halitza and levirate marriage,” the Bavli asks:

A. From whence [in the Torah] do we learn this?
B. As our rabbis taught: “Do not marry a woman as a rival to her sister and uncover her nakedness in the other’s lifetime” (Lev. 18:18). Why is the word aleha used?
C. Because it says, “Her brother-in-law shall unite with her (aleha)” (Deut. 25:5)—I might deduce from this that the verse is [mandating levirate] even with any one of the relatives forbidden by the Torah, [so] here [in Leviticus] it says “aleha” and there [in Deuteronomy] it says “aleha”—just as there it is a religious duty, so too here [even though] it is a religious duty. [Even if the union between a man and his wife’s sister was a levirate union, a religious duty, nonetheless it would be forbidden.]
D. The Torah also says “Do not marry [a woman as a rival to her sister]”—this would only prohibit her, from whence do we learn that her co-wife (tzara) too [is prohibited]? The Torah says, “as a rival” (litzror). . . . From here the sages teach: Fifteen women exempt. . . .58
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The Bavli suggests that levirate marriage might, in theory, be mandated even when it resulted in a man’s marrying a woman forbidden to him, for example, his wife’s sister. While the Torah does not explicitly prohibit levirate marriage in such cases, the prohibition can be derived through exegesis. Further exegesis extends the prohibition to co-wives, even though those women have no kinship ties to the potential levir beyond their marriage to his deceased brother.

The Bavli acknowledges the oddity inherent in the extension of this prohibition to co-wives. It does so by asking whether the prohibition against co-wives of relatives should be extended to situations that do not involve levirate marriage. The six relatives discussed in a subsequent mishna constitute a “stricter” degree of prohibition because they are forbidden to both a man and his brother by the same father, and are thus never subject to levirate marriage. According to Mishnah Yevamot 1:3, a man may marry the co-wives of these six relatives—a man’s mother, his father’s wife (stepmother), his father’s sister, his sister by his father, and the wife of his father’s brother, and the wife of his brother by his father—if those women are widowed or divorced. The Bavli considers the following possibility:

A. I might expand [the prohibition] to the six stricter relatives and forbid their co-wives [should their husbands die or divorce them].

B. You should say: Just as his wife’s sister is particular in that she is a prohibited relative . . . but is permitted to marry his brothers and is forbidden to her levir—and her co-wife is forbidden [as well], so too any woman who is a prohibited relative . . . but is permitted to marry his brothers and is forbidden to her levir, her co-wife is forbidden.

C. This [reasoning] excludes these six stricter relatives, since they are not permitted to marry his brothers—thus their co-wives are permitted, for the [prohibition regarding the] co-wife only applies to a brother [when the situation involves levirate].

According to the Bavli, the prohibition against co-wives applies only when levirate is involved. A man may not marry his dead brother’s wife if she is a close relative, nor may he marry her co-wife. However, a man may marry a widow or divorcée, even if her previous husband was also
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married to one of this man’s closest relatives. Thus a man could find himself married to a woman who once shared a home and a husband with his mother or his sister! He thus marries a woman who was once married to his stepfather or his brother-in-law.

The rule at Mishnah Yevamot 1:1 can be explained by assuming that the rabbis treat all of a man’s wives as a unit rather than as individuals. If so, restrictions that applied to one woman might apply to all of them. This is the case when levirate marriage or halitza occurs; if one of the deceased’s brothers marries or releases one of his brother’s widows, all of the others are free to remarry without halitza.60 A man cannot marry more than one of his brother’s widows, nor can two surviving brothers each marry one of their deceased brother’s widows; like the widows, brothers are treated as a unit vis-à-vis the levirate bond.

Viewing the wives or widows of one man as a unit, however, does not entirely explain the prohibition against co-wives of a forbidden woman. If this were the case, a man could not marry the co-wife of the relatives listed in Mishnah Yevamot 1:3. Co-wives are not treated as a unit unless levirate is a possibility. The Bavli specifies the distinction in its observation that “the [prohibition regarding the] co-wife only applies to a brother [when the situation involves levirate].”

Why are co-wives of female relatives permitted to be marriage partners when their former husband is a “stranger,” but forbidden when the marriage would be a levirate union? I would suggest that it is the rabbis’ concerns about levirate as a type of “permitted incest” that lead them to forbid co-wives of relatives. The “double” ties between a levirate widow who is the co-wife of a relative and her levir render them too close—a man cannot marry a woman who is both his sister-in-law and the co-wife of his daughter or his wife’s sister, for example. While levirate marriage by definition involves a union between two people who are already “close,” they should not be too close, lest people view levirate marriage as incestuous.

The extent to which the rabbis go to downplay the association between levirate and incest can also be seen in additional restrictions on levirate. In addition to forbidding levirate marriage between first-degree relatives (erva) and their co-wives, the rabbis also forbid levirate marriage between a man and his secondary relatives (shniyot). Co-wives of secondary relatives are required to perform halitza, but cannot perform
levirate marriage.\textsuperscript{61} Furthermore, we learn that in cases when there was no chance that a marriage could lead to children, there is no need to do halitza or levirate.\textsuperscript{62}

Finally, some of the early rabbis declare that a levirate union between a man and his childless brother’s widow, even when the woman is technically permitted to the levir and the potential for offspring exists, may be incestuous if the motive for the union is improper. The Tosefta states, “One who has intercourse with his yevama for the sake of [her] beauty, or property, we regard him as if he had approached a forbidden relative (k’ilu pogei’a b’erva), and the child [born of the union] is close to being a bastard.”\textsuperscript{63} This concern is reiterated in both the Bavli and the Yerushalmi, where Abba Shaul states that a levir motivated by his sister-in-law’s beauty, the desire to be married to her, “or something else” is engaging in illicit intercourse.\textsuperscript{64} Given that the motives of the levir and the widow are known only to them, these statements seem to indicate a profound distrust of or distaste for levirate marriage on the part of Palestinian rabbis and a sense that it is essentially incest under the guise of concern for the deceased.

A marriage between a man and his deceased brother’s wife is inherently problematic in a society that normally regards such a union as incestuous. Rabbinic discussions of levirate marriage are aware of this problem and acknowledge it explicitly in their exegesis of Leviticus 18 and 20 and Deuteronomy 25. The result is neither a rejection of levirate nor a wholesale abandonment of incest prohibitions when levirate is mandated. Instead, the rabbis restrict levirate in situations in which familial ties exist between the levir and the yevama beyond the ones created by the latter’s marriage to the former’s brother.

Incest prohibitions serve, according to Carol Meyers, as a negative definition of family: a person whom one cannot marry is a person with whom one has a family connection.\textsuperscript{65} Of course, not every relative is a forbidden sexual partner, nor is every forbidden sexual relationship an indication of kinship. The marriage restrictions on the priestly caste are not incest prohibitions, and biblical law permits marriage to cousins. However, Meyers is correct in arguing that extended incest prohibitions are indicative of a complex rather than a nuclear notion of family. The incest rules found in Leviticus and extended vertically in certain cases by the rabbis suggest a broad definition of family, encompassing several
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generations and including in-laws as well as blood relations and their spouses.

Meyers argues that the incest laws found in Leviticus are evidence of shared residence by extended families. While this may have been the case in early Israel, the rabbis’ retention and expansion of these rules is not proof that they experienced or idealized such living arrangements. The prohibition against a man's having sexual relations with his wife’s mother or sister or his mother’s sister may exist even in a patrilocal society; thus it seems reasonable to assert that a man's being forbidden to have sexual relations with his father's brother’s wife is not evidence of patrilineal relatives sharing a house or compound. Instead, these laws indicate a broad understanding of family, one that is not incompatible with the possibility of nuclear families living separate from the husband (or wife’s) family. At the same time, the emphasis in rabbinic texts on the possible clash between incest prohibitions and levirate obligations suggests that marriages within families and multiple marriages between two families may have been part of the rabbis’ construct of family.

Forms of Marriage and Regulation on Marriage

Anthropologists struggle to define marriage, arguing over whether the definition follows from joint residence, formal recognition of a union through ritual, or the granting of sexual rights and recognition of the children of the union as members of one or both of their parents’ descent groups and their heirs. Rabbinic law understands marriage to be a relationship between a man and a woman that is formalized through ritual and confers rights and obligations on both parties.

There are several forms of marriage. Marriage may be monogamous, requiring that an individual have no more than one spouse at a given time. Societies may permit or even encourage polygamy, allowing an individual to be married to more than one person at a time. Most polygamous societies are polygynous, allowing a man to have more than one wife at a time. Much rarer is polyandry, a form of marriage that allows a woman to have multiple husbands simultaneously.

Rabbinic literature assumes the legality of polygyny. This assumption is woven through all discussions of levirate marriage. The restrictions on marriage between a levir and the wives of his deceased brother discussed in the opening mishnayot of Yevamot, chs. 1 and 2, assume
that the deceased had more than one wife. Furthermore, the possibility of levirate is greatly increased in a society that permits polygyny, since a levir might already be married when his childless brother dies and unable to marry his sister-in-law unless she becomes an additional wife.\textsuperscript{68}

A society may permit polygyny and still practice monogamy much of the time. Burton Pasternak notes that “what a people ‘prefer’ or ‘believe’ they do may not precisely correspond to what they actually do.”\textsuperscript{69} While rabbinic texts like the Mishnah and the Talmuds include rules that assume the possibility of polygynous households, the consensus among scholars is that monogamy was the norm in Roman Palestine.\textsuperscript{70} There is less agreement about forms of marriage in Babylonia, but polygyny seems to have been more acceptable there.\textsuperscript{71}

Although neither Palestinian nor Babylonian rabbinic sources acknowledge a connection between a preference for monogamy and a willingness to supplant levirate with \textit{halitza} (Palestine) or between a willingness to endorse polygyny and the promotion of levirate (Babylonia), such a link seems likely. Other cultural preferences would have reinforced these considerations. Roman society promoted alternative forms of securing an heir for a childless man or a man without sons. In Zoroastrian Babylonia, levirate was employed by non-Jews. Together with forms of marriage, these “strategies of continuity” promoted levirate in some places while discouraging or marginalizing it in others.\textsuperscript{72}

Through the promulgation of incest taboos, societies discourage certain marriage partners. Societies also may attempt to regulate marriage by privileging certain types of marriage. Some cultures promote exogamy, marriage outside the descent group and/or place of residence. Other societies encourage endogamy, marriage within a descent group, caste, or community.\textsuperscript{73} In endogamous groups, certain marriages between relatives may be particularly desirable. In most cases, these preferred unions are types of cousin marriage.

Rabbinic Judaism shows a strong preference for endogamy, marriage within the religious community. Only marriages between Jews have legal status in rabbinic law. Satlow argues that rabbinic Judaism also displays a preference for endogamy within “castes,” promoting marriages within the priestly caste and marriages among rabbinic families.\textsuperscript{74}

The incest taboos of Judaism allow for marriage between uncles and nieces and between cousins. Palestinian sources favor marriages be-
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tween men and their sister’s daughters, while Babylonian sources prefer marriages between women and their father’s brother.\(^75\) Marriages between members of the same patrilineage could be promoted to “ensure a socially compatible partner and also to preserve property within the family.”\(^76\) Numbers 36 prescribes marriage within the patrilineage for daughters who inherited their father’s land; such marriages may still have been favored by Jews in Late Antiquity when a daughter was her father’s heir. In a patrilocal society, marrying a daughter within her father’s extended family may have been a device to ensure that a daughter was well treated by her in-laws. Babylonian sources indicate a desire on the part of parents to marry their daughters within their lineages and their tendency to equate marriage outside the family with the loss of a daughter.\(^77\)

We do not have demographic information to determine the extent to which the Jews of antiquity practiced marriage within the extended family. Many *mishnayot* in the opening chapters of Yevamot assume such marriages. The rule in Mishnah Yevamot 1:1 covers situations in which one brother is married to a woman who is a close relative of a second brother; among these marriages are uncle–niece and great-uncle–niece unions.

Mishnah Yevamot offers a number of rules governing situations in which two or more brothers are married to sisters.\(^78\) There is no indication elsewhere in rabbinic literature that this was a preferred marriage strategy. One can imagine that in a society where brothers lived and worked together on property jointly inherited from their father, such marriages could serve to create harmony in a household that included the brothers, their wives, and children.\(^79\)

For Jewish communities that preferred monogamy, levirate marriage would have become more problematic. Polygyny allows a married man to take his brother’s widow as a second wife or, if he is still single, to marry his brother’s widow without sacrificing the opportunity to make an advantageous or desirable union. To the extent that ancient Jews chose to marry permitted relatives, in particular to marry a sibling’s daughter, levirate might be complicated or even prohibited in many situations. The Mishnah addresses such situations, particularly those in which brothers marry sisters. While this material cannot further our knowledge of Jewish marriage patterns in antiquity, it suggests that the
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rabbis were aware of the complex relationships that could exist within a family. Individuals might simultaneously have multiple roles, and these roles complicate the shifting of roles required in levirate.

Descent and Kinship

Descent determines an individual’s rank or social position; it often determines inheritance rights. There are several approaches to tracing descent. A unilineal descent system is one in which an individual traces his or her descent through only one parent, treating only individuals related to that parent as kin, whereas a cognatic descent system is one in which descent is traced through both parents.

A unilineal descent system may be patrilineal or matrilineal. If the system is patrilineal, descent is traced through the father; all members of the lineage share a common male ancestor (see figure 2). Ego and his siblings, both male and female, belong to the lineage of their father. They are of the same lineage as their father’s brothers and sisters, but the children of their father’s sisters are not part of the lineage; rather, those children belong to the lineage of their fathers. Ego’s mother’s family belongs to a different lineage altogether, so that Ego is not reckoned part of the lineage that includes his mother’s father, siblings, or their
children. A matrilineal system is the mirror image of a patrilineal system, although matrilineal descent systems are far less common than patrilineal ones. In a matrilineal system, all members of a lineage share a common female ancestor (see figure 3). Ego and his siblings belong to the lineage of their mother, that is, the lineage of their maternal grandmother. This lineage also includes all of the siblings of Ego’s mother and the children of her sisters; her brothers’ children are accounted to their mothers’ lineage.

All of these systems understand descent in biological terms. The members of an individual’s descent group share common ancestors, whether male, female, or both. However, membership in a descent group can also be jural, based on the creation or assumption of a legal relationship between an individual and members of the descent group. In fact, these two ways of reckoning descent usually coincide: the jural relationship is based on an assumption of a biological relationship. 

An analysis of rabbinic texts on lineage and inheritance suggests that the ancient rabbis did not employ an exclusively unilineal descent system, but reckoned descent differently in different situations. The determination that the child of Jewish mother and a non-Jewish father is a
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Jew while the child of a Jewish father and a non-Jewish mother is not has led people to characterize Judaism as a system that uses “matrilineal descent.” This characterization, however, is disputed by Shaye Cohen, who argues:

The kinship patterns that characterize matrilineal societies are thoroughly foreign to rabbinic society. With only a few exceptions rabbinic family law is patrilineal. Status, kinship, and succession are determined through the father. As the rabbis say, “the family of the father is considered family, the family of the mother is not considered family” (B. Baba Batra 109b).81

Cohen is correct in pointing out that rabbinic Judaism has none of the features that are usually associated with matrilineal descent groups. Such groups usually provide for inheritance through the mother’s lineage, with men inheriting from their mother’s brothers. They tend as well to be matrilocal, with women remaining in their mother’s village while men leave their family of origin to live with their wives (or remain with their families of origin while visiting their mates). In contrast, rabbinic Judaism assumes patrilocal residence, with women leaving their father’s home upon marriage. Men inherit from their fathers and ideally leave their property to their sons. It would be more accurate to say that, in some cases, rabbinic Judaism ignores or denies biological paternity; in those cases, and in those cases alone, descent is traced through the mother. The child of a Jewish mother and a non-Jewish father is accounted a Jew because rabbinic law refuses to recognize the rights of the non-Jewish father. Similarly, in designating the child of a Jewish father and a non-Jewish mother a non-Jew, the rabbis are denying the legal paternity of the Jewish father, just as they deny the possibility of legal marriage between a Jew and a non-Jew.

The Bavli endorses the idea that “lineage” is traced through the father rather than the mother in a discussion regarding incest. Bavli Yevamot 54b asks why the Torah needed to teach that the prohibition against intercourse with one’s father’s sister or one’s mother’s sister applies whether they share a father or a mother:

R. Abbahu said: It is necessary [to teach both], for if the Torah wrote [only] about the father’s sister, we would say it is because she has a
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connection (that is, that one’s descent is determined by one’s father, not one’s mother), but with the mother’s sister, it is not the case.83

Further into the discussion, the Bavli cites the use of the word mishpaha in Leviticus 25:49 and comments that “the family (mishpaha) of the father is called ‘family’ but the family of the mother is not called ‘family.’”

What are we to make of the Bavli’s assertion that one is “connected” to one’s father’s family of origin but not to one’s mother’s family in view of the prohibitions against sexual relations with maternal relatives and other laws that recognize maternal connections as relatives? Perhaps the Bavli distinguishes between lineage or descent, on one hand, and family, on the other. Legally, a child belongs to the lineage of his father. His rights of inheritance are derived from that connection.84 At the same time, the notion of family transcends lineage, and an individual understands his mother’s kin to be his relatives as well.85 This corresponds to the anthropological understanding of “kindred,” a concept that is related to but distinct from descent. Pasternak explains:

A kindred is a group of individuals all of whom have a relative in common. A single Ego constitutes the group referent and all relationships are traced to him through either males or females. . . . All members of a kindred are considered related to the referent Ego, but not necessarily to each other.86

This construct allows us to understand the family structure described by the rabbis. Individuals, at least those born of legal unions, trace their descent through their fathers, as Shaye Cohen asserts. The individual is identified as the “son of” or “daughter of” his or her father. The term mishpaha is understood to refer to one’s patrilineage or kinship group. At the same time, each individual stands at the center of a kinship web that includes individuals related to him or her through both parents. Ego and the individuals in Ego’s kindred have certain obligations to each other and are subject to rules about their conduct, but some of the individuals in that kindred may have no obligations to each other. Ego, for instance, cannot testify in a court case involving his first cousins on his father’s or mother’s side of the family, but his paternal and maternal cousins may be able to testify against each other. A man or woman may trace descent only through the paternal line but recognize many indi-
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Individuals outside of that lineage, including maternal kin and the kin of his or her spouse as “family.”

Constructing the Rabbinic Family

In this section, we will analyze a series of talmudic passages that discuss various legal issues involving the rights and responsibilities of family members. These passages discuss the laws of mourning, testimony, inheritance, and levirate. Through these discussions, a fuller picture of the rabbinic family—that is, the family as the rabbis imagined it—emerges. It will become clear that a family may be constructed in a variety of ways and that these constructions are not contradictory but complementary. An individual may understand family more narrowly in some situations and more broadly in others. He may have a family obligation to another person in some cases but not others.

The laws of mourning as constructed in the Babylonian Talmud offer the narrowest definition of family:

A. Our rabbis taught: Anyone mentioned in the passage about the priests, for whom a priest must defile himself, a mourner mourns for them. They are: his wife, his father and his mother, his brother and his sister, his son and his daughter. They added to them: his brother and his virgin sister by his mother [but who have a different father], and his married sister by either his father or his mother.

B. Just as one mourns for [these relatives], one mourns for those who are second to them [i.e. their parents or children]—these are the words of R. Akiba. R. Simeon ben Eleazar says: He only mourns for his son's son and his father's father. And the sages say: Anyone for whom he mourns, he mourns with that person.

C. The sages' view is identical to that of the first tanna [i.e. Rabbi Akiba]!

D. The difference between them arises when he is with him in the house. [The sages require a person to mourn the relatives of those close to him only when he is with the primary mourner, while R. Akiba imposes mourning on him even when the primary mourner is not present.]
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E. As Rav said to his son Hyya and as R. Huna said to his son Rabbah: In [your wife’s] presence, act like a mourner. [The wife had presumably lost a close relative and was in mourning.]
When not in her presence, don’t act like a mourner.

F. The son of Mar Uqba’s father-in-law died. He thought he should observe the seven and thirty day mourning periods. R. Huna came to him and found him [acting like a mourner]. He said to him, “Do you want the food of mourners?” They only said [a person should follow mourning customs] out of respect for his wife in the case of his father-in-law and mother-in-law.  

The baraita [A] that introduces the sugya lists the family members for whom an individual is required to mourn. The list is based on Leviticus 21:2 and includes a person’s parents, children, brother, and unmarried sister. While Leviticus does not mention the priest’s obligation to mourn his wife, the rabbis derive that obligation from the verse’s inclusion of the word sh’eiro; a wife is also required to mourn for her husband. Assuming that the sister and brother referred to in Leviticus are children of the same father, the baraita expands the list to include all siblings, whole or half; married sisters are also added to the list.

The first part of the baraita, then, recognizes the concept of what we call the nuclear family. Each individual may be part of two interlocking nuclear families: his family of origin and the family he creates through marriage and procreation. These are the family members “closest” to the individual, for whom he must perform the rituals associated with mourning.

The continuation of the baraita [B] offers additional information about family ties and obligations. Rabbi Akiba requires a person to mourn those individuals who are mourned by the family members for whom he mourns. Thus an individual would mourn for the primary kin of his nuclear family members: his grandparents, aunts and uncles, nieces and nephews, and grandchildren, as well as the spouses of his immediate family and his wife’s parents and siblings. Rabbi Simeon ben Eleazar proposes a narrower definition of secondary kin, emphasizing the direct descent lines of the patrilineage by restricting the obligation to vertical descent in the male line: the paternal grandfather and a son’s son. The sages rephrase the obligation, requiring that one mourn with

[74]
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those for whom he would mourn, a phrase understood by the Bavli as requiring a person to behave like a mourner while in the presence of close relatives who are mourning their own loss.\textsuperscript{89}

The expectation that one will behave like a mourner in certain circumstances when one is not formally designated a mourner is exemplified by the behavior required of a married man or woman whose spouse has suffered the loss of a parent. We learn in the continuation of our sugya that

\begin{quote}
[a] man whose father-in-law or mother-in-law has died cannot compel his wife to use cosmetics. Instead, he overturns his bed [a sign of mourning] and behaves like a mourner with [his wife]. Similarly a woman whose father-in-law or mother-in-law has died does not use cosmetics, but instead overturns her bed and behaves like a mourner with [her husband].\textsuperscript{90}
\end{quote}

This discussion of the laws of mourning recognizes the existence of multiple levels, or concentric circles, of “family.” The first and closest level comprises a person’s parents, siblings, spouse, and children, the members of his two nuclear families. The second level, once-removed from the nuclear family, is made up of the other people in the nuclear families of which the individual’s closest relatives are members. Finally, through a spouse, an individual becomes an adjunct or honorary member of another family, the family of his or her in-laws. Through his wife, a man’s in-laws become his secondary kin, and he may be expected to mourn them, or at least to share his wife’s mourning. This quasi-mourning is a sign of respect for his wife’s attachment to her parents and is not extended to his wife’s siblings.

Leviticus \textsuperscript{21} offers a narrow construct of family, or at least proposes distinctions between close family and extended family. It also leaves open the question of whether women cease to be members of their family of origin upon marriage and become part of their husband’s clan. The priest does not mourn for his sister once she marries, implying that she becomes part of her husband’s family and ceases to be a member of her family of origin. However, if this is the case, why does Leviticus \textsuperscript{21} fail to mention the wife as one of the individuals for whom the priest must mourn? If a woman leaves her family of origin upon marriage, should she not be considered part of her family by marriage and be mourned by her husband.
as his close kin? Given the incest laws in earlier chapters of Leviticus, it would be reasonable to conclude that the priestly laws regarding mourning are extremely restrictive owing to their focus on priestly purity.

Rabbinic laws of mourning build on Leviticus 21 but expand its definition of family. Part of this expansion resolves the status of married women, acknowledging that marriage brings a woman into a new family, that of her husband, while allowing her to retain her membership in her family of origin. Or, to be more precise, it acknowledges that an individual, male or female, may simultaneously be a member of three families: his or her family of origin, the family created through marriage, and the spouse’s family of origin. Both men and women are treated as members of their spouses’ family in some ways but not in others, as we shall see in discussions of testimony, inheritance, and incest.

The definition of family can be broadened by a study of the laws of testimony. The third chapter of tractate Sanhedrin prohibits relatives (qerovim) from serving as judges or witnesses in each other’s court cases. This prohibition necessitates a discussion of who is considered a relative. The list offered in the Mishnah focuses on male relatives, since women are prohibited from serving as judges and may give testimony only in very limited circumstances:

A. *These are the relatives [who may not serve as judges or witnesses]:* his father and his brother, and his father’s brother and his mother’s brother, and his sister’s husband, and his father’s sister’s husband and his mother’s sister’s husband, and his mother’s husband and his father-in-law and his brother-in-law [his wife’s sister’s husband] — they and their sons and their sons-in-law — and his stepson alone.91

B. *Said R. Yose: This is the teaching of R. Akiba, but the earlier teaching [listed]:* his uncle and his uncle’s son and anyone who is eligible to inherit from him.

C. *[The prohibition applies] to anyone who is related to him at the time [when the person witnesses the matter that is in question, or when the case comes before the court]. If he had been a relative and then ceased to be a relative, he is fit [to serve].*

D. *R. Judah says: Even if his daughter died and [his son-in-law] had children by her, [the son-in-law] is [still considered] a relative.*92
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The Mishnah’s initial list [A] defines a man’s male relatives as including male members of his nuclear family of origin and the spouses of the female members of that family. It also includes his parents’ male siblings and the spouses of their female siblings. The phrase “they and their sons and their sons-in-law” extends the ban to a man’s nephews and male cousins, as well as the husbands of his nieces and female cousins, his stepbrothers, and the husbands of his stepsisters. Relatives by marriage—a man’s father-in-law, brothers-in-law, and stepson—are also included.93 The Mishnah does not mention that a man’s son may not testify against him, apparently considering this information obvious on the basis of Deuteronomy 24:16.

The Bavli’s initial discussion of the Mishnah focuses on the exegesis that supports the Mishnah’s claims. This discussion interprets Deuteronomy 24:16—“Fathers shall not be put to death for sons, and sons shall not be put to death for fathers”—as being concerned with generations rather than with individuals, that is, banning a “father,” a man from one generation of a family, from testifying against a “son,” a member of the subsequent generation, whether the man in question is his own son or his brother’s son. This reading of the words “fathers” and “sons” recalls the bifurcate-merging system of kinship nomenclature, where an individual might refer to his paternal uncles and cousins as fathers and siblings. Deuteronomy 24:16 appears to focus on intergenerational relationships; the Bavli expands the scope of the verse to cover relationships between members of the same generation:

“We find [in the verse support for forbidding testimony by] fathers against sons and sons against fathers, and how much the more so fathers against each other. From where [do we derive the prohibition of testimony by] sons against sons?”

This section assumes that we need no biblical support to prohibit brothers (“fathers”) from testifying against each other, presumably because their degree of kinship is so close. Cousins (“sons”) are further removed from each other than either is from the other’s father, and additional exegesis is required to support the prohibition against their testimony.

The next section of the sugya also employs a generational model of family. In determining which relatives are forbidden to testify against each other, the Bavli identifies individual members of a family as mem-

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bers of a given generation or degree of kinship: first, second, and third. The first generation includes Ego’s father and his father’s brother, whose relationship is based on a common immediate ancestor, Ego’s paternal grandfather. The second generation includes Ego and his paternal uncle’s son and son-in-law. The third generation includes Ego’s son and son-in-law and the son and son-in-law of his first cousin, his paternal uncle’s son. The Bavli’s question concerns which “generations” are forbidden to testify against each other, using Ego as the point of reference:

A. Said Rav: My father’s brother cannot testify regarding me—[not] him, his son or his son-in-law. Furthermore I cannot testify regarding him—[not] me, or my son or my son-in-law.

B. Why [can’t Ego’s son testify in a case involving his father’s uncle]? He is a third [generation relative and his great-uncle] is a first generation relative. We learned [about restrictions involving] a second generation relative and [another] second generation relative, and we learned about a second generation relative and a first generation relative, but we did not learn about a third generation relative and a first generation relative!

C. The son-in-law mentioned in the Mishnah is the son-in-law of Ego’s son [proving that the Mishnah does prohibit testimony between a member of the third generation and a member of the first generation].

D. Let the Mishnah teach “his grandson” [to make this point]!

E. [The Mishnah, in teaching it this way] makes the additional point that a husband has the same status as his wife.

This model suggests that closeness dissipates as the “lines” that connect family members become less direct. Two second-generation males, Ego and the son of his father’s brothers, are one generation removed from being “directly” connected through a common father; the Mishnah explicitly teaches that they cannot testify against each other. Similarly, the Bavli’s exegesis of Deuteronomy 24:16 demonstrates that a “father,” that is, a member of the first generation and a “son,” a member of the second generation, cannot testify against each other. Rav, however, seems to expand the list of prohibited relatives by making the ban reciprocal, claiming that Ego’s sons and sons-in-law cannot testify in cases where Ego himself cannot testify. Why, however, should Rav extend this pro-
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higation to a situation involving members of the first and third generations, Ego’s son and Ego’s uncle? Perhaps the connection of Ego’s son to his own great-uncle is tenuous enough to allow for testimony. Additional comments discuss the possibility that a son-in-law might be considered one generation further removed than a son, suggesting that marrying into a family does not produce the same level of closeness that being born into the family produces. The Bavli concludes, however, that “a husband is like his wife,” that a man marrying into a family has the same legal status (or generational status) as the woman he marries; a man, his brother, and his sister’s husband are all first-generation kin, while their sons and their daughters’ husbands all have second-generation status with regard to each other. Rav Nahman extends the prohibition against testimony by in-laws to include a wife’s uncles and cousins. The Bavli offers a principle that “a husband is like his wife” or “a wife is like her husband,” meaning that from a legal perspective a man is “related” to his wife’s family members in the same way she is and vice versa; this principle explains the extension of the Mishnah’s rule to a variety of in-laws.

The Bavli concludes that a man may not testify in a case involving his betrothed, whether his testimony benefits or harms her case, because while she is not yet legally his kin, “the reason [for prohibiting the testimony of a relative] is a sense of closeness and [a betrothed man] is inclined to think of [his betrothed] as someone close to him.” The reason for the prohibition, beyond the biblical justification, rests on the assumption that a person is close to his family and is therefore an unsuitable witness or judge, insofar as he might favor or lie on behalf of a family member. We can therefore conclude that for Bavli Sanhedrin, the idea of “family” or “relations” includes individuals related to a person through both his father and his mother, individuals married to blood relatives on both sides of the family, and his spouse’s family, including those married to her blood relatives. “Closeness” is not a function of shared ancestors alone; it can be extended to those who come into a family through marriage. The laws of testimony offer a broad definition of family, constructing a kinship web that extends over four generations, from the generation of Ego’s parents to that of his grandchildren, and encompasses his in-laws as well as his direct kin.

The laws of inheritance offer a different understanding of family, one
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that privileges inheritance by individuals who share a common male ancestor, but allows for the transfer of property out of the patrilineage. The eighth chapter of Mishnah Baba Batra considers the laws of inheritance. It explores the relations between parties who may inherit from or bequeath property to each other:

A. There are those who inherit and bequeath [to and from each other], those who inherit but do not bequeath, those who bequeath but do not inherit, and those who neither inherit nor bequeath.

B. These inherit and bequeath: A father [may inherit from and bequeath to] his sons, and sons [may inherit from and bequeath to] their father, and brothers with the same father [may inherit from and bequeath to each other].

C. A man [may inherit] from his mother and from his wife, and sons of [a man’s] sister may inherit [from their mother’s brother], but [these men] do not bequeath [to their mother, wife or maternal uncle].

D. A woman [may bequeath] to her sons or her husband, and brothers of a mother [with sons may bequeath property to those sons, their nephews], but they do not inherit [from their sons, husband, or sister’s sons].

E. Brothers with the same mother [but different fathers] neither inherit [from] nor bequeath [to each other].

The order of inheritance is thus: “If a man dies without leaving a son, you shall transfer his property to his daughter” (Num. 27:8). A son takes precedence over a daughter and all of the son’s issue takes precedence over a daughter. A daughter takes precedence over the brothers [of her father] and all of the daughter’s issue takes precedence over the brothers. Brothers [of the deceased] take precedence over brothers of the father [of the deceased] and all of the brothers’ issue takes precedence over brothers of the father. . . . And the father takes precedence over all of his issue.

On the basis of Mishnah Baba Batra 8:2, the order of inheritance is as follows: (1) sons; (2) daughters; (3) father; (4) brothers; (5) sisters; (6) father’s father; (7) father’s brothers; and (8) father’s sisters (see figure 4). A nat-
ural heir’s rights are transferred upon his or her death to his or her children.\textsuperscript{101} If a man’s sons predecease him, their surviving children, male or female, would take precedence over the man’s own daughters.\textsuperscript{102}

Inheritance is, for the most part, patrilineal. A man’s primary heirs are members of his patrilineage: his children, his father, and his brothers and sisters from the same father. The Mishnah affirms the right of women to inherit in the absence of male heirs. The final clause of Mishnah Baba Batra 8:2, “the father takes precedence over all of his issue,” allows a man’s sisters to inherit his estate before his grandfather or paternal uncles, because the sister’s claim derives from her deceased father and is therefore superior to that of uncles or a grandfather. Furthermore, in the event that a man has no children, siblings, or paternal uncles, and was predeceased by his father and grandfather, his father’s sisters, his paternal aunts, could inherit his estate. While preferring men to women as heirs, in affirming the ability of women within the patrilineage to inherit from their fathers and brothers, as well as from more distant male relatives, and their ability to transmit their inheritance rights to their children, the Mishnah leaves open the possibility that a man’s estate
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will devolve on grandchildren, nephews, nieces, or even more distant kin who are not part of his mishpaha. At the same time, such inheritance is secondary; the heir who is not part of the patrilineage inherits only because he or she is the heir of a member of Ego’s patrilineage. The Bavli claims that “the family (mishpaha) of the father is called “family” but the family of the mother is not called ‘family’ ” to explain why mothers cannot inherit property from their sons and brothers cannot inherit from each other if they share only a mother;103 the right to inherit is derived from a shared male ancestor.

The exception to this principle is the right of a husband or children to inherit from their wife or mother, which the Bavli ties to various biblical verses.104 A wife has a unique position in her husband’s family; it is through his wife, who is likely not to be a member of his patrilineage, that a man has children to whom he transmits his name and property. The wife does not become part of her husband’s lineage, but she is essential to the preservation of that lineage. Her marriage creates a new relationship that on some level supplants her ties to her family of origin; her husband and her children are recognized as her heirs instead of members of her own patrilineage, even when her property derives from her family of origin.

The laws of inheritance recognize degrees of closeness within a patrilineal family. In explaining why Ego’s father takes precedence over his other sons (Ego’s brothers), but not his grandsons (Ego’s own sons), the Bavli states that “the closest [relative] takes precedence.”105 The ties between a man and his children are closer than those between that man and his father, at least with regard to inheritance. The preferred order of inheritance is downward or vertical, with a man’s property being transferred to his sons and daughters or to their issue.106 Inheritance by a man’s brothers is acceptable only when he leaves no issue; Ego’s brother does not displace Ego’s daughter, because the preference for vertical inheritance supersedes any preference for a male heir or an heir who will guarantee that property is kept within the patrilineage.107 The Bavli notes the link between levirate and inheritance; any child (or grandchild) obviates the need for levirate, and only when levirate is necessary are Ego’s brothers positioned to inherit from him.

Levirate law is closely related to other aspects of family law. As we have already seen, the incest laws set forth in Leviticus and expanded
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on by the rabbis are cited in limitations on levirate. A community whose marriage preferences involve endogamy, marriage between relatives, may find it difficult to perform levirate without committing incest. Levirate is closely connected to inheritance law, as acknowledged in the eighth chapter of Baba Batra. Rabbinic discussions of levirate, like those about mourning, testimony, and inheritance, offer glimpses into the rabbis’ notions of what constitutes family.

The opening mishna of tractate Yevamot lists the women who, if they are married to a man’s brother, exempt their “co-wives”—any other wives their husband may have—from levirate marriage and halitza:

Fifteen women exempt their co-wives and the co-wives of their co-wives from halitza and levirate marriage forever. They are:

His daughter, and his daughter’s daughter and his son’s daughter.

His wife’s daughter, and her son’s daughter and her daughter’s daughter. His mother-in-law, and the mother of his mother-in-law and the mother of his father-in-law, his sister by his mother, and his mother’s sister, and his wife’s sister, and the wife of his brother by his mother, and the wife of a brother who did not live at the same time he did, and his daughter-in-law.108

The Bavli begins its discussion of this mishna by asking about the order in which the relatives appear on the list. The Bavli first questions why the list begins with the daughter rather than one of the other women. The Bavli responds by claiming that the “teacher [of the mishna] chose [to list the members on the basis of] closeness”; that is, closer relatives are listed before more distant relatives:

He teaches “his daughter, and his daughter’s daughter and his son’s daughter” for they are closely related to him. Since he taught three generations below him, he also teaches three generations below [the man’s wife]. Since he taught three generations descending from her, he also teaches three generations above her. Then he teaches “his sister and his mother’s sister” for they are closely related to him. Since he was dealing with prohibitions that derive from sisters (ahava), he teaches “his wife’s sister.”109

According to the Bavli, a person’s daughter and granddaughters are among his closest relatives, as are his sister and his aunt.110 While rela-
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tives by marriage, the women closely related to his wife are not as “close” to a man as his blood relatives; they are nonetheless his relatives.

The opening mishna of Yevamot underscores the complexity of family relationships. Every individual in a family has different roles; within his immediate family, a man may simultaneously be his parents’ child, his wife’s husband, his child’s parent, and his siblings’ brother. The Mishnah assumes the possibility of marriage within an extended family, such that a woman may be her husband’s niece and her father’s sister-in-law; these marriages make levirate marriage complicated, if not impossible.

Multiple marriages between members of two families result in individuals being classified in a number of ways. When one of these roles mandates levirate marriage and another makes levirate marriage impossible, does one role take precedence over the other? Does the order in which events—marriages and deaths—occur influence the possibility of levirate marriage? These are the problems addressed at Bavli Yevamot 5a. The Bavli considers a case in which two brothers are married to two sisters. If one of the brothers dies, the surviving brother cannot perform levirate marriage, because he is forbidden to marry his wife’s sister. The Bavli asks whether the commandment to perform levirate marriage might supersede the prohibition against marrying one’s wife’s sister:

A. Granted [such supersession might be possible] when the deceased had married [one sister] and then the surviving [brother] married [the other sister], for since [the requirement of levirate] supersedes the prohibition of a brother’s wife, it should also supersede the prohibition of a wife’s sister. But when the surviving [brother] married and then the [now] deceased [brother] married, the prohibition of the wife’s sister preceded [her status as his brother’s wife, and thus a potential partner in a levirate marriage].

B. And even if the deceased married [first]—granted [levirate might have been a possibility] when the [now] deceased [brother] married and then died, and only then the surviving [brother] married [the other sister], so that [the first sister, his widowed sister-in-law] was available to him in the interim [before his marriage to her sister], but when the deceased [brother] married,
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but did not die until after the surviving [brother] married, [the
widow] was never available to him!111

While the Mishnah posits the possibility of various combinations of marriages between members of two families, the possibility most frequently mentioned by the Bavli involves two brothers married to two sisters.112 In the event that such marriages occur, a man’s brother’s wife will also be his wife’s sister. The men are both brothers and brothers-in-law, and their wives are sisters and sisters-in-law. While both brothers are alive, these dual labels are not an issue, since the woman in question is prohibited to her brother-in-law both as his wife’s sister and as his brother’s wife.

If, however, one of the brothers dies without children, these relationships or roles become oppositional. The yevama’s status as “brother’s wife” is now grounds for levirate marriage, while her status as “wife’s sister” presumably makes levirate impossible. The questions being explored by the Bavli are: Could we distinguish between cases based on chronology? Could levirate be permitted if the yevama became “available” before the yavam married her sister? Could that permission be extended to a situation in which the yevama was the yavam’s “brother’s wife” and thus a potential levirate mate before she entered the category of “wife’s sister?” These turn out to be rhetorical questions, since the Bavli concludes that a man may not perform levirate marriage with his wife’s sister under any circumstance, but the discussion underscores the complexity of family relationships. People may be related to one another in a number of ways, creating a complex web of kinship and kinship obligations.113

Bavli Yevamot 21a–b considers the possibility of levirate when the degree of kinship between the brother-in-law and sister-in-law is more distant than “wife’s sister”:

MISHNAH

They enunciated a general principle with regard to the yevama:
Any woman who is forbidden as an ethra does neither levirate marriage nor halitza. [If she is forbidden] due to the prohibition of a mitzvah . . . she may do halitza but not levirate marriage, . . . A prohibition of mitzva [refers to] secondary relatives [prohibited] by
the words of the scribes.
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GEMARA

A. Our rabbis taught: Which [women] are [in the category of] secondary relatives? His mother’s mother, and his father’s mother, and the wife of his father’s father, and the wife of his mother’s father, the wife of his father’s brother from the same mother, and the wife of his mother’s brother from the same father, and his son’s daughter-in-law, and his daughter’s daughter-in-law.

B. A man is permitted to [marry] his father-in-law’s wife and his stepson’s wife, but forbidden to [marry] his stepson’s daughter. His stepson is permitted to [marry his stepfather’s] wife and daughter. . . .

C. It was asked of them: The wife of his mother’s brother from the same mother, what is her status? [Is a distinction made between her and] the wife of his father’s brother from the same mother and the wife of his mother’s brother from the same father — [do we say because] both involve a father, the rabbis made a decree about them, but where there is no father involved, the rabbis do not make a decree, or is there perhaps no distinction [and the wife of the mother’s brother from the same mother is also forbidden]?

D. R. Safra said: That [prohibition against the wife of his mother’s brother from the same father] is itself a decree; do we make a decree based on a decree!

E. Rava said: Are not all [the prohibitions regarding secondary relatives] a decree based on a decree? His mother is forbidden [by the Torah], his mother’s mother is a secondary prohibition, and they decreed regarding his father’s mother because of his mother’s mother. What is the reason [for this additional prohibition]? All of them are called “the household of grandmother.” His father’s wife is forbidden [by the Torah], his father’s father’s wife is a secondary prohibition, and they decreed regarding his mother’s father’s wife because of the father’s father’s wife. What is the reason [for this additional prohibition]? All of them are called “the household of grandfather.” The wife of his father’s brother from the same father is forbidden [by the Torah], the wife of his father’s brother
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from the same mother is a secondary prohibition, and they decreed regarding the wife of his mother’s brother from the same father because of the wife of his father’s brother from the same mother. What is the reason [for this additional prohibition]? All of them are called “the household of my uncle.”

F. What [is the law regarding these decrees]? Come and learn: When R. Judah bar Shela came, he said: They say in the west: Any situation in which a female relative is forbidden by the Torah, the wife of the corresponding male relative is forbidden as a secondary relative.

G. Rava said: Is that a general principle? His mother-in-law is forbidden, but the wife of his father-in-law is permitted. The daughter of his mother-in-law is forbidden, but the wife of the son of his mother-in-law is permitted. The daughter of his father-in-law is forbidden, but the wife of the son of his father-in-law is permitted! His stepdaughter is forbidden, but the wife of his stepson is permitted. The daughter of his stepdaughter is forbidden, but the wife of the son of his stepdaughter is permitted.

H. What does the statement of R. Judah bar Shela include? Is it not to include the wife of the mother’s brother from the same mother, since in any situation in which a female relative is forbidden by the Torah, the wife of the corresponding male relative is forbidden as a secondary relative?

I. What is the difference between these [the wife of the father-in-law and the wife of the son of the mother-in-law who are permitted] and this one [the wife of the mother’s brother from the same mother who is forbidden]? This one is related to him through one marriage, while these are not related to him except through two marriages.

J. R. Mesharshia of Tusnia sent to R. Papi: Let our rabbi teach us—the wife of the brother of the father’s father and the sister of the father’s father, what is their status? Since relatives one generation removed [from an individual] are forbidden, did the rabbis decree regarding an additional generation of removal, or perhaps the generation [farther removed] is separated [and these women are no longer considered relatives]?
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k. Come and learn: [The baraita above taught]: “Which [women] are [in the category of] secondary relatives?” and did not specify these!

L. [Perhaps] it taught and left some out!

M. What did it leave out that it left out these?

N. It left out the secondary relatives [taught] by the school of R. Hiyya.

O. Amemar permitted the wife of the brother of the father’s father and the sister of the father’s father.

The Torah prohibits marriages between Ego and many of his female relations. These prohibitions include women to whom Ego is related by blood—his mother, sister, granddaughter, father’s sister, mother’s sister—and those related by marriage—his stepmother, stepsister, daughter-in-law, brother’s wife, father’s brother’s wife, and wife’s sister. While these prohibitions are multigenerational, involving women of Ego’s generation (his sister), his parents’ generation (his parents’ sisters), and two generations removed in descent (his granddaughters), they cannot be equated with generational bans, since Ego may marry his first cousin or his niece. After ruling that a woman is forbidden to contract levirate marriage or perform halitza when a relationship with her brother-in-law is forbidden by the Torah on grounds of consanguinity, the Mishnah considers relationships that are not prohibited by the Torah but fall into a category of “secondary” relatives forbidden by the sages. These secondary relationships represent a “one step removal” from those primary relationships mentioned in Leviticus. Sometimes, the “step” is generational. The Torah prohibits intercourse between a man and his mother, and the rabbis extend that prohibition to a grandmother. Sometimes, the step represents an additional prohibition within a generation or type of relationship. The Torah prohibits intercourse between a man and his father’s brother’s wife. The sages restrict this prohibition to a situation where Ego’s father and uncle share a father, but then add a prohibition to cover the wives of other uncles, whether maternal uncles or the brothers of Ego’s father by the same mother but different fathers. These prohibitions represent an expansion of the definition of family—at least with regard to incest prohibitions—to include more members of the generations above and below Ego, on both his father and mother’s side and by marriage.
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We also learn that some degrees of kinship are stronger than others. A stepchild is treated like a relative in some instances, but the degree of kinship that exists between a stepparent and stepchild is not equivalent to that of a biological parent and child. Ego is forbidden to marry his stepdaughter or the daughter of his stepson, just as he is forbidden to have a sexual relationship with his own daughter or granddaughter [B]. However, he would be permitted to marry his stepson’s wife if she became a divorcée or widow; her status is not equivalent to that of Ego’s son’s wife, who would be forbidden even if her marriage to Ego’s son ended. In-laws are part of Ego’s family, but some of the prohibitions that extend to various members of Ego’s family of origin do not extend to his family by marriage.

Having determined what types of relatives are included in the category of “secondary” kin, the Bavli [C] asks about female relatives who have not yet been considered. The question revolves around the status of the “wife of [Ego’s] mother’s brother from the same mother.” The woman in question is the wife of Ego’s maternal uncle; the uncle and Ego’s mother have a common mother but different fathers. The problem raised by the Bavli stems from the rabbis’ understanding of various prohibitions in the Torah. Leviticus explicitly prohibits a sexual relationship between a man and his aunt, whether she is his father’s sister or his mother’s sister.115 It also prohibits a relationship between a man and his father’s brother’s wife.116 The Torah does not prohibit a relationship between Ego and his mother’s brother’s wife; Rav Safra [D] understands this prohibition as a post-biblical decree. Furthermore, unless specified, the relationships prohibited by the Torah are assumed by the Bavli to deal with cases when siblings—in this case, one of Ego’s parents and a sibling of that parent—have a common father. That being the case, the Bavli regards prohibitions against a union between Ego and the wife of his father’s brother from the same mother as a rabbinic prohibition rather than a biblical one. The relationship under consideration, a relationship between Ego and the wife of his mother’s brother from the same mother, seems too far removed from the Torah’s prohibition to be a legitimate case for a decree.

Rav Safra’s question underscores the emphasis on patrilineal descent and the role of patrilineage in determining a hierarchy of kinship. The question is not whether Ego is related to his uncles; they are certainly
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part of his family, whether they are related to one of his parents through a shared father or mother or both. The question is: What is the nature of the legal relationship between Ego and his uncles, as determined by the degree to which their lineage can be traced to common male ancestors? The strongest bonds, in a legal sense, are between a man and his father’s kin, when those kin share a common father—Ego’s paternal grandfather. This shared male ancestor is the source, so to speak, of the prohibition against a sexual relationship between Ego and his father’s brother’s wife. The rules that forbid a union between Ego and other uncles’ wives, paternal uncles who share only a common mother with Ego’s father, or maternal uncles whose father is Ego’s maternal grandfather, are likewise rooted in connections through men. The paternal uncles, though not the sons of Ego’s paternal grandfather, are the brothers of his father, while the maternal uncles in question share a father with Ego’s mother. In contrast, Ego’s mother’s brother by a common mother has no “male” connection to Ego; there is no “father” within two generations of Ego who has kinship ties with this man.\(^{117}\)

Rava’s response to Rav Safra [E] underscores the force of kinship even when it is not patrilineal or through a common male ancestor on the mother’s side. Rava concedes that the prohibitions against the wife of any uncle other than Ego’s father’s brother by the same father are “extensions” or protections for the core prohibition, the one explicitly mentioned in the Torah. However, according to Rava, all the extensions are equally legitimate, even those that are, as it were, secondary extensions (gezera lig’zera). These prohibitions reflect the way that people talk about their families. The term “grandmother” is used for both a mother’s mother and a father’s mother. Similarly, a grandfather’s wife, regardless of whether the grandfather in question is a paternal or maternal grandfather, is referred to as a member of “the household of Grandfather.” The term “uncle” may be used indiscriminately to describe all the brothers of Ego’s father or mother, with no indication as to whether these siblings have a common father or a common mother.

The Bavli, then, acknowledges a variety of ways of defining kinship. Some ways of organizing kinship ties are hierarchical, with precedence given to paternal relatives, particularly relatives who share a common grandfather. Others are looser, recognizing that a number of individuals, some related paternally and others related maternally, may all be
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viewed by Ego as members of his extended family. While relationships may be defined very clearly through kinship terminology, which distinguishes a mother’s brother from a father’s brother, a person may call both of these men “Uncle.”

The Bavli now considers a general rule transmitted by Judah bar Shela [F]: “Any situation in which a female relative is forbidden by the Torah, the wife of the corresponding male relative is forbidden as a secondary relative.” This rule expands prohibitions against sexual relations with one’s female relatives to include the wives of one’s corresponding male relatives. This rule explains the extension of the prohibition against intercourse between a man and his mother’s sister to his mother’s brother’s wife. Rava questions this general rule [G], noting situations in which a woman is forbidden but the wife of the corresponding male relative is indeed permitted. The Bavli’s response [I] serves as a comment on the strength of relationships created through marriage:

*What is the difference between these (the wife of a man’s father-in-law, the wife of the son of the mother-in-law, and the other women mentioned in Rava’s objection, all of whom are permitted) and this one (the wife of the mother’s brother from the same mother who is forbidden)? This one is related to him through one marriage, while these are only related to him through two marriages.*

When a man and a woman marry, their marriage creates a bond between each of them and the other’s relatives. Through her marriage, a woman acquires new relatives—her husband’s parents become her father-in-law and mother-in-law, her husband’s children become her stepchildren, and so on. A man’s marriage transforms his legal relationship to his wife’s female relations; his mother-in-law, sister-in-law, and stepdaughter, women who might once have been available to him, become forbidden.

In the cases described here, a distinction is made between a connection created by one marriage and one created through two marriages. When a man’s maternal uncle (even an uncle who shares only a mother with Ego’s mother) marries, that marriage produces a connection between Ego and his uncle’s wife, and that connection excludes the possibility of a sexual relationship between them. Ego’s relationship with the other women discussed here is built on two marriages, the marriage be-
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tween Ego and his wife and the marriage between the woman in question and her husband (Ego’s father-in-law, the son of Ego’s mother-in-law or father-in-law, stepson or stepgrandson).119

Finally, the inquiry of Rav Mesharshia of Tusnia [J] raises the question of extending prohibitions an additional generation upward, forbidding a sexual relationship between Ego and his great-aunt or the wife of his great-uncle. Ego is already prohibited from a relationship with his grandmother or grandfather’s wife; the Bavli determines that this prohibition, itself an extension, is not extended to include the grandparent’s siblings or siblings’ spouses. The limit acknowledged here reflects not the generational gap between these women and Ego, since an identical generational gap exists between Ego and his grandmother, but the increasing degree of separation between them. While the women in question are, technically speaking, part of Ego’s family—one is a member of his patrilineage—their connection does not justify an extension of the incest laws.

The question of a cutoff point for prohibited sexual relationships is discussed in detail in the Yerushalmi:

A. It was taught: R. Hanin says: In all of these instances [listed in the baraita], there is no cut-off point, except for the wife of the father of his mother.

B. Bar Qappara says: In all of these instances, there is a cut-off point. For Bar Qappara added [to the list]: the mother of the father of his mother and the mother of the father of his father.

C. Rav said: In the instance of the daughter-in-law of his son, there is a cut-off point.

D. What is the distinction?

E. The daughter-in-law of his son comes from a different source.

F. Rav said: Seed that derives from him is prohibited [regardless of the number of generations between Ego and the individual in question. But descendants of an in-law—presumably from a relationship to an individual outside of Ego’s family—are not prohibited].

G. R. Yose the son of R. Bun said: The reason of Rav is that [were there no cut-off point for in-laws] Abraham would be forbidden to all Jewish women and Sarah would be forbidden to all Jewish men.120
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This passage proposes a distinction between descendants and ancestors, and between direct descendants and the descendants of individuals who married into a family. Rabbi Hanin allows for no cutoff point, forbidding to Ego all of his female ancestors, while Bar Qappara limits the extent of the prohibition to great-grandparents. Rav extends the prohibition to all of Ego’s direct descendants, but acknowledges that the prohibition against sexual relations with a daughter-in-law does not apply to her descendants by a man other than Ego’s son. Such a prohibition is too drastic, as it would create a kinship web that might effectively make marriage impossible, as seen by the hyperbolic example of Abraham and Sarah, the “parents” of the Jewish people. Even with some cutoffs, the discussions in the second chapter of Yerushalmi and Bavli Yevamot offer very broad definitions of family, extending prohibitions against sexual contact to at least three generations of ancestors and infinite generations of descendants.

Conclusions

Biblical texts that deal with levirate marriage focus on the obligations of one member of a family, the levir, to another, his deceased brother. There is also an emphasis on obligations to family continuity through preservation of name and property. This obligation naturally rests on men, who have both the power and, at least in theory, the greatest stake in continuing the family line, and emphasizes men’s duties toward male kin. The role played by Tamar and Naomi, and to a lesser extent Ruth, in promoting the survival of their late husbands’ names, suggests that women were seen as essential partners in promoting family continuity. In patrilineal societies, it is wives from outside the patrilineage who become the vehicles for transmission of patrimony, and this factor is perhaps acknowledged through the advocacy of Tamar and Ruth, whose outsider status is underscored in Genesis 38 and the Book of Ruth.

Discussions of kinship structure in rabbinic texts indicate that family connections generate obligations and duties as well as restrict sexual relations between family members. An individual mourns for his close kin and supports them when they mourn. Certain rules and restrictions are grounded in the assumption that a person naturally favors his kin. A man cannot serve as a judge or witness in a case involving family members, because he cannot or will not be seen as impartial or unbiased. A
family has an interest in transmitting its property within the family, if at all possible through direct vertical inheritance or, if that is not possible, through transmission to the closest surviving relatives.

One aspect of rabbinic inheritance law suggests a weakening of unilateral descent, or at least of the need to keep property within the patrilineage. While the Book of Numbers insists that a daughter who inherits must marry within the patrilineage, rabbinic law allows daughters to inherit unconditionally. Furthermore, in the absence of children, father, or brothers, rabbinic law allows a man’s property to be bestowed on his sisters and their heirs, even though this results in property being transferred outside the deceased’s patrilineage. While a man’s property can be inherited only by someone related to him through his father or paternal grandfather, the heir may be a woman who has married or will marry outside the patrilineage.

Analysis of various rabbinic texts that deal with some aspect of family law indicates that family and kinship ties were constructed in a variety of ways, depending on the situation. The laws of mourning are narrowly applied, while incest laws reveal a broad definition of family. Some of these differences can be explained by remembering the connection between rabbinic law and scriptural material. Leviticus 21, which serves as the support for the obligation to mourn relatives, offers a very short list of family members, while the cases mentioned in Leviticus 18 and 20, the basis for the laws of incest, are more expansive. There are also social factors involved in definitions of family. Mourning restricts an individual’s behavior for a specific period of time and requires that he or she be supported by the community. It also responds to a perceived emotional bond between the mourner and the deceased, a bond that renders the mourner incapable of everyday social and economic intercourse. Such an expectation of more distant relatives may be unreasonable and might leave the immediate family with fewer supporters during the mourning period, placing a greater burden on the community. Extended incest prohibitions, in contrast, do not place a burden on an individual’s ability to find a spouse, especially when the extensions focus primarily on individuals who are several generations removed from Ego, women he would be unlikely to marry in any event. Furthermore, the prohibitions introduced by the rabbis do not restrict the types of marriages between
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family members that were favored by Jews in antiquity, marriages between an uncle and a niece.

While rabbinic texts offer a broad definition of family and kinship, they do not portray the extended family as a residential unit or the primary focus of an individual's responsibility. The laws of mourning apply primarily to a person's immediate kin, his nuclear family of origin, and the family he creates through his marriage. His obligations to mourn for family members outside of this circle are described as obligations to his immediate family to mourn with them. The preference for direct descending inheritance privileges the relationship between a man and his children over that between him and his family of origin—his father and his brothers. Similarly, a married woman's connection to her husband and children takes precedence over that to her family of origin in matters of inheritance.

Furthermore, the rabbis, while constructing a complex picture of the family, acknowledge that families generate tensions that might discourage extended family groups from sharing a residence. The assumption of acrimony between a woman and her husband's female relatives, discussions of disputes over inheritance between men who share a patrilineage, and differences of opinion among brothers as to how to resolve a levirate obligation all suggest that large families were not necessarily harmonious families and that shared residence might not have been desirable. Discussions of levirate indicate that individual men and women made choices that reflected their perceptions of their own needs, not the needs of the extended family, and rabbinic support for those decisions indicates a growing focus on the nuclear family over the extended family.

The construct of the family assembled from rabbinic texts can support levirate marriage. Levirate is possible despite the extension of incest prohibitions, since most of the women a man can marry can also marry his brother. A preference for direct vertical inheritance is well served by levirate, insofar as traditional levirate assigns children to the deceased rather than the levir. An emphasis on the patrilineal family, the mishpaha, would presumably encourage a sense of obligation between sons of the same father, and the extended family might support a levir's decision to marry his brother's widow. But, as we shall see, the rabbis do
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not portray the extended family as a source of support for levirate marriage. Instead, they focus on the parties most affected by levirate, the levir and the widow, and consider how they play out the bond that has been generated by the death of their brother and husband. Levirate, as imagined by the rabbis, focuses not so much on a family challenged by death as on individuals who may or may not choose to establish a new family, one that is founded on the death of a relative but that has no obligations to him beyond its creation.
Brothers

Ordered by his father to “provide offspring for [his] brother,” Judah’s son Onan takes steps to ensure that he will not in fact provide his deceased brother with a child. This act is “displeasing to YHVH,” and Onan dies. It is ironic that in the Book of Genesis, a book that includes the theft of a brother’s birthright and blessing, the sale of a brother into slavery, and fratricide, it is the refusal of a man to fulfill an obligation to his late brother that draws divine wrath and death at the hand of God. This narrative, together with the ritual of shame directed at a man unwilling to fulfill his obligation to his deceased brother in Deuteronomy 25, suggests that levirate is the ultimate test of fraternal loyalty.

This chapter explores the relationship between brothers in a levirate situation, seeking answers to the following questions: When one brother has died and the other is expected to enter into a levirate union, can the levir’s devotion to his dead brother be gauged by his willingness or unwillingness to perform levirate? Is eagerness to perform levirate seen in rabbinic texts as a sign of brotherly love or self-interest? What might motivate a man to opt for levirate marriage or for halitza?

The Mishnah and later rabbinic texts also consider situations in which the deceased is survived by more than one brother. Such a situation might improve the likelihood that levirate will be performed, since at least one brother might be willing to marry the widow. One can imagine a situation in which several brothers work together to determine
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which of them is best suited to fulfill the levirate obligation that devolves on all of them. At the same time, brothers might have different opinions about what course of action would best serve their interests. The possibility of a levirate marriage between the widow and one of the surviving brothers might lead to dissent among the brothers. The institution of levirate may have been intended to preserve a family, but it has the potential to undermine familial bonds among the surviving relatives. This chapter considers the potential for tension between the interests of the living brothers and how levirate law responds to that tension.

The rabbis are concerned not only with resolving the levirate bond, but also with the levir’s motives for choosing a levirate union. On one hand, the Mishnah and later rabbinic texts acknowledge that it is the levir who makes the decision to perform levirate marriage or to submit to halitza. The decisive role taken by Judah in promoting a union between Onan and Tamar and later preventing a union between Tamar and his surviving son, Shelah, is not translated into rabbinic discussions about the role of the deceased’s father in promoting or discouraging levirate marriage. Nor does Naomi’s role in bringing about Boaz’s marriage to Ruth occasion consideration of the role of the extended family in encouraging levirate. While affirming that the choice between levirate and halitza is the levir’s to make, the rabbis betray anxiety about the reasons the levir might choose levirate, maintaining that levirate should be motivated by the desire to fulfill a commandment, not the desire to marry an attractive or wealthy woman. The discussions about the levir’s motives suggest that the rabbis are well aware that levirate is less about the commitment of the living to the claims of the dead than it is about the living seeking to promote their best interests. While the Bavli includes a critique of men who would marry their sisters-in-law for the wrong reasons, it acknowledges and to some extent accepts the primacy of the living and their needs and wishes. In the end, the ancient rabbis place the wishes of the surviving brother(s) ahead of those of the deceased, privileging the concerns of the living over the claim of the dead and emphasizing the right of the individual to place his own interests above those of his extended family. Brothers may have a claim on each other, but that claim is not absolute, nor is the extended family expected to enforce that claim on behalf of the deceased.
Brothers

The focus on the levir’s right to choose his course of action also reveals a shift in the understanding of the levirate obligation. The Torah presents levirate as the fulfillment of a man’s duty to his deceased brother. Failure to marry one’s sister-in-law and provide children for one’s brother is seen as abandonment of one’s obligation to one’s brother. It might also be constructed as the obligation of a man toward his widowed, childless sister-in-law, although that emphasis is absent from Deuteronomy 25 and Genesis 38. In contrast, rabbinic literature describes levirate as a religious obligation rather than a familial duty. As a result, resolution of the levirate obligation or bond, through either levirate marriage or halitza, allows the levir to fulfill his obligation to the tradition. Halitza, which in Deuteronomy symbolizes a failure to honor one’s obligations, serves for the rabbis as an appropriate response to a religious obligation. In conceiving of levirate as a general religious duty rather than a commitment to the deceased or to the extended patrilineage, the rabbis deemphasize fraternal and familial obligations. In doing so, the rabbis allow the individual to satisfy his own desires — to marry or not marry his childless brother’s widow — while satisfying their understanding of his religious obligations.

Brothers in the Hebrew Bible

Family relationships are central to the Hebrew Bible. The nation of Israel has its origins as the family of the patriarch Jacob; the emphasis on the familial cohesiveness of Israel is emphasized by the marriages of the three patriarchs to women within their extended family.1 Within the context of “nation as family,” brothers can be individuals who share a father and mother, or they can be complete strangers who affiliate with the nation Israel. Our focus, for the purpose of discussing levirate marriage and the family, is on the former, but it is worth reviewing the ways in which the word “brother” is understood in biblical texts.

The word “brother” is used in several ways in the Hebrew Bible. The word can denote a fraternal relationship between two men with the same father and/or mother. Biblical Hebrew makes no linguistic distinction between full brothers (brothers who share two parents) and half-brothers (brothers who share only one parent). The second use of the word is broader, indicating kinship. Thus Abraham describes his
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relationship with his nephew Lot as a brotherly one. The word can be used in an even broader sense, to describe the relationship between individual Israelites.²

Men who view each other as brothers are expected to show loyalty toward each other; conflict between brothers is undesirable. Responding to a quarrel over limited resources between his servants and those of his nephew Lot, Abraham says, “Let there be no strife between you and me, between my herdsmen and yours, for we are brothers (anashim ahim anahnu).”² When Abraham learns that Lot, his “brother,” has been taken captive, he mounts an expedition to rescue him.⁴ Judah’s argument for selling Joseph rather than leaving him in the pit to die is premised on the fact that Joseph is “our brother, our own flesh.”⁵

The Hebrew Bible also recognizes obligations between men who are described as brothers. Kinsmen are expected to redeem their “brother’s” land if he is forced to sell it.⁶ If a man sells himself into bondage to a non-Israelite, “one of his brothers should redeem him.”⁷ If a man dies without children, it is his brother’s obligation, through levirate marriage, to provide a child who will preserve the name of the deceased.

At the same time, the Hebrew Bible acknowledges that relationships between brothers are not always ideal. The Psalmist’s observation, “How good and pleasant it is when brothers dwell together,”⁸ seems ironic when we consider the biblical narratives that describe fraternal relationships. The first murder, according to Genesis, was a fratricide. Isaac and Ishmael, Jacob and Esau, Joseph and his brothers all serve as examples of brothers’ inability to live together and to share family resources. Strife between brothers can be seen in the Books of Judges, Samuel, and Kings. Even the relationship between Moses and Aaron, certainly the most “brotherly” of any found in the Hebrew Bible, is marred by the latter’s murmuring against his brother.⁹

A man’s obligation to preserve his brother’s name through levirate may not always be embraced by the surviving brother. Deuteronomy 25 acknowledges this, while offering, through the complaint of the widow and the proclamation of the elders, a critique of a man unwilling to fulfill his levirate duty. A man may resent providing children for his brother, as in Genesis 38, or feel that taking on another man’s widow and property, only to see that property go to children he cannot claim as his, is a responsibility that threatens his own estate (Ruth 4). An analysis of bibli-
Brothers in Rabbinic Texts

The earliest rabbinic documents, the Mishnah and the Tosefta, contain material that considers the legal aspects of the fraternal relationship. Most of the discussions about brothers, outside of those relating to levirate marriage, involve brothers’ division of their father’s estate and the business relationships that result from that division or from the decision to hold the property jointly. If brothers choose to divide their father’s estate, each bears responsibility for the portion he takes. If, for instance, brothers divide a field inherited from their father, the field is now treated as two separate fields and each brother must set aside a corner of his field for the poor. If, however, they merge the divided field, becoming partners, only one corner must be left unharvested.10

Either by choice or as a result of inheriting property together, adult brothers may find themselves living together. The Mishnah describes a situation in which adult brothers share a house and some household goods while each maintains some utensils separately.11 Another rule imagines adult brothers who are business partners and who eat Sabbath meals together at their father’s home while maintaining separate residences.12 In these cases, the concern of the Mishnah is to distinguish between the status of jointly held property and private property. The Mishnah also imagines the different living arrangements available to adult brothers; they might live together—presumably in the house they inherited from their father—or they might live separately while sharing economic interests. These rules suggest a fair amount of interaction between brothers while acknowledging the possibility of a certain degree of independence.

The closeness of brothers has legal ramifications. Brothers may not serve as witnesses for or against each other in court; nor may one brother serve as a judge in a case involving the other.13 A man is believed when he testifies that a signature is that of his brother, on the assumption that he would be familiar with his brother’s handwriting.14 Brothers may not marry each other’s widows or divorcées. And in the event that one brother dies without a child, brothers are obligated to perform levi-
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rate marriage with their brother’s widow or release her from the levirate bond through halitza.

As we have seen, the word “brother” can be understood narrowly or broadly. While the Mishnah usually employs the word “brothers” to describe men who share at least one parent, it both recognizes in the biblical text and employs for itself a broader usage. The decision, then, to interpret the word “brothers” in Deuteronomy 25:5 narrowly, restricting the levirate obligation to men who share a parent with the deceased, or broadly, extending responsibility for the widow to a larger segment of the deceased’s male kin, involves not only the interpreter’s reading of the Torah, but also his understanding of family and commitment to levirate. The exegetical strategy of the tannaim with regard to Deuteronomy 25:5 reveals something about kinship in ancient Israel as well as the history of both biblical interpretation and levirate marriage.

The Bible itself offers mixed evidence. The use of the word yavam in Deuteronomy 25 suggests that the obligation is restricted to a situation in which the deceased has a brother. In Genesis 38, Judah orders his second son, Onan, to fulfill his duty to his deceased brother by impregnating Er’s widow, Tamar. Although Judah never gives Tamar to his third son, Shelah, after both Er and Onan die, the narrative makes it clear that doing so would have been appropriate. It is not clear how we should understand Judah’s fathering of twins on Tamar. The conclusion of the story could be read as an indication that another male relative could fulfill the levirate obligation when there was no brother. On the other hand, the narrative could portray an irregular situation and speak more to Judah’s emergence as a leader in his family than to an explication of levirate in ancient Israel.15

The Book of Ruth suggests that the responsibility to ensure the preservation of a childless man’s property and name may devolve on any man in his patrilineage, although precedence may have been given to closer relatives. Naomi’s words to her daughters-in-law in Ruth 1:12 suggest that a widow could expect to marry her deceased husband’s brother. Naomi’s comment, “I am too old to marry,” raises the possibility that even a half-brother by the same mother could fulfill the levirate duty, although we could argue that Naomi’s musings are meant to underscore the hopelessness of her situation rather than to suggest that such a course of action, even if feasible, would be legally effective.
Later in the Book of Ruth, we learn that redemption of property can be carried out by male kin with a more distant connection to the deceased. Boaz is referred to as a “kinsman of Elimelech.” Boaz himself claims that the unnamed kinsman who will later refuse to redeem the property and take Ruth as his wife is “even closer than” he himself is. Clearly, Boaz and the unnamed kinsman could be at best brothers or nephews of Elimelech, leading some scholars to claim that the Book of Ruth allows any male relative close enough to redeem property to fulfill the levirate obligation.

All of these approaches can be seen in other cultures. Some restrict levirate to the deceased’s brothers, with some even specifying that only certain brothers can fulfill this obligation; others assign responsibility for the deceased’s widow to some other man within the patrilineage. At least one ancient Near Eastern source designates the deceased’s father as an acceptable husband for his childless son’s widow.

Sources from the Second Temple period indicate that ancient Jews understood the levirate obligation to fall solely on the brothers of the deceased; other male relatives had no such obligation. These sources, however, give no indication of whether the brother who is expected to enter into a levirate union with his sister-in-law must be a full brother of the deceased. Nor is there any specification that the brothers must share a common father. The task of defining “brother” with regard to levirate is left to the early rabbis. They begin with the assumption that only a biological brother, a man who shares a parent or two parents with the deceased, is eligible to fulfill the levirate obligation. A widow whose husband left neither children nor brothers is not a levirate widow; she is free to marry outside her husband’s patrilineage, and a marriage within the patrilineage would not constitute levirate.

The *tannaim* also conclude that while the levir must be a brother, not every brother can be a levir. Only a brother who shares a father with the deceased is called on to perform levirate marriage; maternal brothers are excluded from the obligation. Even a paternal brother may be excluded from levirate if his mother was a slave or a non-Jew. The Tosefta raises the question “May a *mamzer* (a child born to a forbidden union) perform levirate marriage or *halitza*?” The question is answered in the affirmative by the Bavli, although a marriage between a legitimate Israelite woman and a male *mamzer* would in fact be forbidden.
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Yevamot 11:2 also excludes from levirate obligations brothers who were conceived or born before their mother converted to Judaism; “brotherhood” is erased by the children’s conversion, which renders each of them “like a newborn child” with no kinship ties.24 An additional exclusion applies to the “brother who was not [alive] in [the deceased’s] lifetime.” Such a brother is exempt from levirate marriage based on the rabbis’ reading of the phrase “When brothers dwell together” in Deuteronomy 25:5.25 All of these exclusions limit the circumstances in which a man will be called on to enter into a levirate marriage.

The Bavli’s discussion of which brothers have levirate responsibilities focuses on a narrow reading of Deuteronomy 25:5:

A. Where is written the [prohibition against levirate with] the wife of his brother who was not [alive] at the same time as he?

B. R. Judah said Rav said: The verse says, “When brothers dwell together”—when they have a shared stay in the world; this excludes the wife of his brother who was not [alive] at the same time.

C. “Together”—together in inheritance; this excludes a maternal brother.

D. Rabbah said: Paternal brothers [alone are obliged to perform levirate marriage]. It is taught through “brotherhood” “brotherhood” in reference to Jacob’s sons. Just as there, they were brothers with a common father but not a common mother, here too [in Deuteronomy 25] they must be brothers with a common father but not with [only or necessarily] a common mother.

E. Might we learn “brotherhood” “brotherhood” from [the discussion of] forbidden unions [where the prohibitions are understood to include the wives of maternal brothers as well as the wives of paternal brothers]?

F. We learn from the use of the word “brothers” in both places, not from the word “your brother” [in reference to forbidden unions]. . . .

G. Might we learn “brotherhood” “brotherhood” from Lot, as it is written, “For we are brothers” (Gen. 14:8) [thus extending the levirate duty to other men in the patrilineage]?
Brothers

The Torah wrote “together”—together in inheritance [which excludes defining brothers as men of the same patrilineage who do not share a father].

Through these readings, rabbinic sources indicate that there are different types of brothers. From a semantic (and biological) point of view, any males who share at least one parent are brothers; men more distantly related but of the same patrilineage may also be described as brothers. From a legal point of view, this is not necessarily the case, or rather, men may be called brothers and still not have all of the legal obligations that devolve on brothers. Men with a common father, and with mothers whose status is such that paternity determines the child’s status, have certain rights and responsibilities to each other, including the right of inheritance and the obligation of levirate. Someone born after his brother’s death cannot fulfill the levirate obligation, because while the two are technically brothers, they have no shared interests; they had no shared “stay” (yeshiva) in the world and they have no shared inheritance rights.

In using the word “together” to determine our understanding of the word “brothers,” the Bavli connects the levirate obligation and inheritance rights. A childless man’s heirs are his father and his paternal brothers. In some societies, a man’s wives are part of his estate, transmitted to his heirs together with his property. While this is not the case in Jewish tradition, one might argue that the man or men who inherit the deceased’s estate should also assume responsibility for the childless widow. This argument is certainly put forth in the Book of Ruth.

Levirate serves to restore the proper sequence of inheritance, insofar as a man’s first and preferred heir is his child. Levirate allows for the possibility of a posthumous child and heir for the deceased, provided by his close kin. Ironically, the levir, in fathering a child for his deceased brother, disinherits himself; the child born of a levirate union, if assigned to the deceased, would take precedence over the deceased’s brothers, including the child’s own biological father. This possibility might serve as a powerful disincentive to perform levirate. As we shall see, rabbinic law removed this disincentive and in so doing created other problems in the distribution of the deceased’s estate.

The affirmation of the levirate bond through marriage or its dissolu-
tion by halitza requires a decision on the part of the deceased’s brother. When there is only one surviving brother, the responsibility for levirate clearly rests on him. The situation becomes more complicated when there are several surviving brothers. Rabbinic discussions of the possible outcomes of such a scenario underscore the possibility that decisions made by one brother could have a positive or a negative impact on the others. Furthermore, the discussions make the reader aware that the opportunity presented by a levirate situation could lead to conflict among the surviving brothers. In doing one’s “duty” to the deceased or in refusing to do so and opting for halitza, a man may also be protecting his own interests. As the rabbis are clearly aware, the interests of one brother do not necessarily serve the interests of the others.

While acknowledging that any brother who meets the requirements described above can, in theory, perform levirate marriage or submit to halitza, the Mishnah and the Tosefta put a special obligation on the oldest surviving brother. He bears the primary responsibility to perform levirate marriage. If he refuses, the other brothers are given the option, but should they too refuse, the burden rests on the oldest “to do levirate marriage or halitza.”30 This emphasis on the responsibility of the oldest brother is apparently a rabbinic innovation; Judah turns to the older of his two surviving sons to marry Tamar, but there is no indication that the oldest surviving son was the one required to perform levirate.31

Although the oldest surviving brother takes precedence, levirate marriage or halitza is valid if performed by any brother. Mishnah Yevamot 2:8 states, “It is the duty of the oldest [brother] to perform levirate marriage, but if the younger [brother] acts first, he has acquired [his sister-in-law as his wife].” The use of the verb “to act first” (qadam) rather than “to perform levirate marriage” (yibem), the verb used to speak of the oldest brother’s duty, suggests that the younger brother has preempted his older sibling. Rather than imagining the brothers conferring to determine who might be best positioned to assume the duties of a levir, our text hints that the brothers might act independently of one another and without consultation.

Mishnah Yevamot 4:5 reiterates the primacy of the oldest brother. It also insists that there should be no delay in regularizing the status of the levirate widow, through either marriage or halitza:
Brothers

It is the duty of the oldest [brother] to perform levirate marriage. If he doesn’t want to, we go [in turn] to each of the brothers. If they do not want to, we return to the oldest, and say to him, “The duty is yours, release her or marry her.” If he wants to wait for a minor brother to grow up, or for an older brother to return from abroad, or for a deaf or mentally incapacitated brother [to recover], we pay no attention, but say, “The duty is yours, release her or marry her.”

The Bavli’s discussion of this mishna begins by considering which is preferable, halitza by the older brother or intercourse (i.e., levirate marriage) with a younger brother. For the Bavli, the question is: Do we privilege levirate marriage or do we privilege an act by the oldest surviving brother, even if that act is halitza? While focusing on the question of whether levirate or halitza takes precedence, the Bavli imagines cases in which none of the brothers are willing to respond to the levirate bond and cases in which various brothers seek to evade their levirate obligation by passing it on to a brother who is not presently able to perform it. In this discussion, the precedence assigned to the oldest surviving brother is portrayed not as a privilege but as a responsibility to be enforced when no brother is willing to volunteer.

In other cases, the rabbis imagine brothers as spoilers whose acts of intercourse with their sister-in-law may undermine the position of the other brothers. Discussing a situation in which one brother is a minor, Mishnah Yevamot 10:6 states:

A boy of nine years and a day [who has intercourse with his widowed sister-in-law] invalidates her [for levirate] with the [other] brothers, and the [other] brothers [may, through their actions] invalidate her for him. But while he invalidates her [for the brothers only when his act of intercourse comes] at the beginning [i.e. when no adult brother has taken any action], the brothers invalidate her [through action] at the beginning or the end [before or after the minor brother’s act]. How so? A boy of nine years and a day who has intercourse with his widowed sister-in-law invalidates her [for levirate] with the [other] brothers. If they [subsequently] have intercourse with her, or make a declaration [of intent to perform levirate marriage], or give her a bill of divorce or submit to halitza, they invalidate her for him. [The minor, whose act of intercourse
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This *mishna*, together with the *mishnayot* of the fifth chapter of *Yevamot*, posits situations in which more than one brother performs an act that affects the status of the *yevama* vis-à-vis all of the brothers. These sources suggest that brothers may act in ways that mar another brother’s attempt to marry his sister-in-law. While acknowledging the Mishnah’s penchant for fantastic cases, we may also read into these scenarios the rabbis’ acknowledgment that a levirate situation brings with it the potential not only for abuse (since the woman may not have the power to choose among the brothers or repel unwanted advances), but also for conflict among the brothers as each advances his agenda.

There may be an advantage to the brothers coordinating their response to their childless brother’s death. In a situation involving several brothers, it might be argued that some are more suited to perform levirate marriage than others. In some cases, according to the Mishnah, one brother might be disqualified by his relationship to the widow, while another brother might be permitted to marry her.\(^3\) One brother might have marriage plans that would be thwarted by levirate marriage; in such a case, his marriage plans could be salvaged if another brother performed levirate or *halitza*.\(^2\) The Mishnah considers a situation in which the widows of two brothers are themselves sisters. The death of their husbands leaves these two sisters bound to the surviving brothers. These brothers are faced with a dilemma; since each woman has a claim on each of them, each potential wife is also “the sister of the woman bound to him.” The solution, according to Mishnah *Yevamot* 3:1, is that both women should perform *halitza* and cannot enter into levirate marriage. If, however, “one of the sisters is forbidden to one of the brothers as a prohibited relation, that brother is forbidden to [marry] her but is permitted to her sister.”\(^3\) In another scenario, each brother is forbidden to one of the sisters, setting up a situation in which each brother could marry the sister to whom he is not forbidden. These complex situations, involving multiple marriages between members of two families, require some discussion between the surviving brothers; it might be possible for one brother to perform levirate marriage if the brothers ascertain which *yevama* is permitted to which brother. Situations like these can be re-
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solved, that is, levirate marriage or *halitza* can occur without any additional disruption to the brothers, when the brothers confer and choose the brother willing or able to fulfill the levirate obligation.

The Mishnah, while describing such possibilities, also imagines cases in which brothers seem to avoid their responsibilities or attempt to cast them on each other. The Mishnah considers a situation in which “[the oldest brother wants to] wait for a younger brother to grow up, or [a younger brother wants to wait] for the oldest brother to return from abroad, or for a deaf-mute or mentally incapacitated [brother to recover].” Here the brothers who are on hand do not want to fulfill the levirate obligation, but are prepared to leave the widow in limbo. The rule in the Mishnah, which allows an outside authority, presumably a court, to force a brother to act, hints at a situation in which the brothers cannot come to an agreement or where all the brothers see levirate as a burden.

While the Bavli frames all of its questions in relation to its audience, asking what the preference of the rabbis is regarding levirate marriage versus *halitza*, the question can legitimately be directed at the brothers: What might be the preferred strategy of the surviving brothers regarding their widowed sister-in-law? Is the precedence assigned to the oldest brother an attempt to ensure that the widow’s status is resolved, or is it an attempt to guarantee an orderly resolution to a potentially explosive situation within the deceased’s family?

The problem here, the potential for disharmony among the surviving brothers, stems from a rabbinic interpretation of levirate law. In most societies, children born from a levirate union are assigned to their mother’s deceased husband. Those children, rather than the levir, inherit the deceased’s property. In such a situation, providing offspring for a childless man ensured that his property would be inherited not by his brothers but by the children one of them fathered on his brother’s behalf with his brother’s widow.

At first glance, this appears to have been the case in ancient Israel as well. Onan’s unwillingness to impregnate his sister-in-law Tamar is attributed to his understanding that “the seed would not count as his.” Deuteronomy 25:6 states that “the first son” [born to the widow and the levir] shall be accounted to the dead brother.” In Ruth 4:5, Boaz’s speech to Elimelech’s unnamed kinsman and the latter’s refusal to marry Ruth
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“to perpetuate the name of the deceased upon his estate” suggest that the child born to a widow and her deceased husband’s kinsman was the heir of the deceased.36 Such a system puts a man who performs levirate at no greater advantage than his brothers with regard to the property of their dead brother. It might put the willing levir at some disadvantage, insofar as he would assume responsibility for administering his brother’s estate for the children of the levirate union.37 Levirate would disadvantage all surviving brothers, since it prevents them from inheriting their brother’s estate by providing him a posthumous child.

Rabbinic sources, however, insist that the brother who marries the yevama inherits his deceased brother’s estate. The rule is stated unequivocally in Mishnah Yevamot 4:7: “One who marries his yevama acquires the property of his brother.” R. Judah disagrees in part, claiming that if the father of the deceased is still alive, he would inherit the property; however, the brother who performs levirate marriage would eventually inherit both his own share and the deceased’s share of the father’s estate.

The Bavli justifies disinheriting the child of the levirate union in favor of the levir through a convoluted exegesis of Deuteronomy 25:6.

A. Our rabbis taught: “The first son”—from this [we learn] that it is the duty of the oldest [brother] to perform levirate marriage… “shall be accounted to the dead brother”—in the matter of inheritance. (Basing itself on the literal reading of ahiv as “his brother,” the midrash indicates that the levir who marries his sister-in-law should “take his brother’s place,” that is, inherit his brother’s estate.)

B. You claim it refers to inheritance, but perhaps it refers to the name. [If the deceased was named] Joseph, they name [the first born of the levirate union] Joseph. [If the deceased was named] Johanan, they name [the first born of the levirate union] Johanan.

C. Here [in Deuteronomy] it says, “shall be accounted to the dead brother,” and there [Gen. 48:6] it says, “They shall be recorded under the name of their brothers in their inheritance.” Just as “name” there refers to inheritance, so too here “name” refers to inheritance… /The Bavli refutes the previous suggestion,
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insisting that “name” does not mean naming the child for the deceased but assigning the deceased’s property to his “replacement,” that is, the brother who marries the widow.}

D. Rava said: Even though throughout the Torah [we teach that] no verse ever loses its contextual meaning, here the result of applying the exegetical principle of *gezera shava* is that the contextual meaning is entirely lost!

E. If there was no *gezera shava*, would I say that “name” actually means [that the child bears the deceased’s] name? Whom is the Torah addressing? If it is the levir, it should read, “shall be accounted to your brother.” If it is the court, it should read, “shall be accounted to his father’s brother.” Perhaps the Torah is saying to the court: Say to the levir, “[The child born to you] shall be accounted to his [that is, the levir’s] brother.” Rather, the result of applying the exegetical principle of *gezera shava* is that the contextual meaning is entirely lost.38

This exegesis, which the Bavli acknowledges utterly ignores the context of the verse, names the levir as his brother’s heir. It severs the connection between the child born of the levirate union and the deceased; the child is not expected to bear the deceased’s name, nor is he the deceased’s heir. The property of a childless man reverts to his brother if that brother enters into a levirate union; it will eventually be divided among all of the levir’s sons, whether they are his sons by his brother’s widow or by other wives. It is difficult to argue that levirate marriage under these conditions offers any preservation of the name of the deceased, whether we understand “name” in the literal sense or as inheritance. This construct of levirate leaves the deceased with no acknowledged descendants, nor does it preserve his property separately from that of his brother. It does, however, make levirate marriage an enticing economic prospect for the levir, at least in cases where the deceased left a significant estate.

If none of the brothers choose to marry the *yevama*, the disposition of the property is quite different. When one of the brothers submits to *halitza*, the property is divided among all of the surviving brothers; if their father is alive, he inherits and they will receive a share of their brother’s estate as part of their paternal inheritance.39 The Bavli empha-
sizes that *halitza* neither privileges nor penalizes the brother who carries out the ritual.

The discussions at Bavli Yevamot 24a and 40a indicate that while levirate marriage can be financially desirable for one brother, *halitza* can enrich all the surviving brothers. In other words, if the deceased brother had a sizable estate, it is in the best interest of any given brother to marry the widow, while the other brothers have an interest in making sure that he does not marry her. It may be that in assigning the responsibility for levirate first and foremost to the oldest brother, the rabbis were trying to prevent quarreling among the brothers. Furthermore, since “levirate is tied to inheritance,” perhaps it seemed most logical to bestow the *yevama* on the oldest brother, who, if he was the firstborn, was already privileged vis-à-vis the family estate.

We can now understand why a younger brother might “act first,” supplanting his older brother by having intercourse with, and thereby marrying, the *yevama*. We can also understand why brothers might be disinclined to strategize a group response to the death of a childless brother. Levirate is no longer a disinterested act on the part of the levir; it is, at least potentially, a financially attractive option. We can now understand the Mishnah’s statement, “Four brothers married to four [unrelated] women and [the brothers] died—If the oldest [surviving brother] wants to perform levirate marriage with all of [the widows], he may do so.”

Why would a man take on four additional wives when he has the option of *halitza* or sharing the responsibility for levirate with his brothers? It is conceivable that a man might choose to do levirate solely for his brother’s estate, and here there is the possibility of absorbing the property of four brothers.

These discussions indicate that in a levirate situation involving more than one surviving brother, the brothers may find themselves competing for the economic opportunity provided by levirate marriage. In a case in which levirate is not an attractive option, the brothers may try to foist the responsibility for the widow on each other. It is also possible that some brothers would advocate for *halitza* while one brother wanted to perform levirate. In addition to the conflict between a single surviving brother’s own interests and those of the deceased (insofar as levirate as imagined by the rabbis serves the interests of the deceased), levirate may ignite conflicts among the surviving brothers. These passages,
then, suggest that the philosophy “every man for himself” may be more of a factor in fraternal relations than is “one for all and all for one” and that levirate, rather than demonstrating loyalty to brother and family, may create or reveal deep divisions among brothers.

**Motives for Levirate Marriage**

The Bible pinpoints some of the motives of a man whose desire is to avoid levirate marriage. Levirate threatens a man’s inheritance and the preservation of his property; it also requires him to father children for someone else. The only motives offered by the Bible for choosing a levirate union are a sense of duty to the dead or the desire to avoid shame. Rabbinic law removes the disadvantages to levirate marriage, assigning the children of the union and the estate of the deceased to the levir. In doing so, it also creates a possible incentive for levirate marriage: the opportunity to inherit one’s brother’s property.

The rabbis’ anxiety over the levir’s motives in choosing levirate marriage is detailed in the Bavli. After considering whether levirate performed by a younger brother is preferable to halitza performed by the oldest surviving brother, the Bavli considers the choice between levirate and halitza:

A. *They taught there [in Mishnah Bekhorot 1:7]: Levirate takes precedence over halitza. [That was the case] at an earlier time, when their intention was to fulfill a commandment. Now, when it is not their intention to fulfill a commandment, they said: Halitza takes precedence over levirate.*

B. *Rav said: We do not compel [halitza].*

C. *When [levirs] came before Rav, he would say, “If you wish, release her; if you wish, marry her. The Torah leaves the choice to you.” For Deuteronomy 25:7 reads, “If the man does not want [to marry her]”—it’s what he wants—if he wants, he releases her and if he wants, he marries her.*

D. *And even R. Judah was of the opinion that we do not compel [halitza].*

E. *For when R. Judah prepared a document for halitza, [it read]: So-and-So, the daughter of So-and-So brought So-and-So her brother-in-law to court before us, and we recognized him as the*
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brother of the deceased by the same father. We said to him: If you wish to marry her, marry her; if not, stretch your right leg out to her so she can perform halitza. . . .

F. At an earlier time, when their intention was to fulfill a commandment, levirate took precedence over halitza. Now, when it is not their intention to fulfill a commandment, they said: Halitza takes precedence over levirate.

G. Rami bar Hama said R. Isaac said: They went back to saying that levirate takes precedence over halitza.

H. R. Nahman bar Isaac said to him: Have people improved?

I. At the beginning, they were of the opinion of Abba Saul; eventually, they were of the opinion of the sages. As it is taught: Abba Saul says: One who marries his sister-in-law for the sake of [her] beauty, or for the sake of marriage [that is, because he wants her as his wife] or for another reason [many commentators: her money or his brother’s estate], it is as if he approached a forbidden relative and I am close to designating the child [of such a union] a mamzer. But the sages say: “Her husband’s brother shall unite with her”—in any case.41

This passage underscores the problems implicit in a form of marriage designed solely for the benefit of a third party. On one hand, the Torah calls on a man to provide children for his deceased brother. It is understandable that the rabbis would therefore encourage or at least support levirate marriage. On the other hand, the rabbis cannot contemplate forcing a man into a levirate union, given the possibility of refusal detailed in Deuteronomy 25:5–10. The ideal compromise, as Rav states in [C], is to allow the levir to choose.

The rabbis have, in fact, removed several of the disadvantages to a man considering a levirate marriage. In doing so, they have made levirate unions almost indistinguishable from regular marriages. However, they now face a dilemma: a man might now choose levirate not out of a sense of duty to his brother, but for one of the many reasons a man might choose to make any marriage. A man might find his brother’s widow attractive, or he might desire the property she brought into the marriage or the estate left by his brother. In that case, the union will formally be a levirate union—the partners will be a childless man’s widow and
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brother—but the reason for the union will actually have nothing to do with the deceased. Such a union, argues Abba Saul, looks much like an incestuous union between a man and his sister-in-law.

The acknowledgment that a levir’s motives for agreeing to a levirate union might be “inappropriate,” that is, having much more to do with his feelings for his sister-in-law (or hers for him) than his sense of duty toward his brother, is voiced in two mishnayot in the fifteenth chapter of Yevamot. There we read:

*If a woman and her husband travel abroad with their son, and she returns and says, “My husband died and then my son died,” she is believed. [If she said,] “My son died and then my husband died,” she is not believed, but we are concerned about what she has said, and she performs halitza rather than levirate. . . .

A woman is not believed when she says, “My brother-in-law died,” so that she can remarry, nor [is she believed when she says,] “My sister died,” so she can marry [her sister’s husband]. A man is not believed when he says, “My brother died,” so he can marry his [brother’s] wife, nor [is he believed when he says], “My wife died,” so he can marry her sister.*

The second of these mishnayot is cited at Bavli Yevamot 94a, where the Gemara explains why a woman is not permitted to enter into a levirate marriage on the strength of her own testimony to her husband’s death. The Gemara states that there is concern that the woman may be lying in order to marry her brother-in-law, whom she loves. If the Bavli acknowledges that a woman may be attracted to her brother-in-law and eager to enter into a levirate union with him, it must also be aware of the possibility that the brother-in-law is attracted to her. This would explain the Mishnah’s rejection of a man’s testimony when that testimony, if accepted, would allow him to marry his sister-in-law. These discussions express concern that family closeness may lead to inappropriate attachments between in-laws. If brothers lived together or near each other, there would have been ample opportunities for brothers-in-law and sisters-in-law to spend time together and develop feelings toward each other, positive or negative. The relationship between a brother-in-law and sister-in-law may have been a particularly complex one when the latter was married to a childless man. On one hand, the potential
Levir and yevama, possibly living in close proximity, are aware that a sexual relationship between them is strictly forbidden. On the other hand, they also know that if the woman’s husband were to die childless, not only would they be permitted to have a sexual relationship, they would be expected to initiate such a relationship. This knowledge may have caused some strain on relationships between in-laws. It may also explain the animosity the Mishnah assumes to exist between sisters-in-law. These women, if their husbands die without issue, may become co-wives, a relationship that is not imagined to be a happy one for the women involved.

Preference for levirate over halitza or halitza over levirate is widely discussed in scholarly considerations of Jewish marriage in antiquity. The shift in favor of halitza has been portrayed as a response to the preference for monogamy, a preference that makes levirate difficult to realize. The Bavli’s dispute may reflect cultural differences between Palestine and Babylonia. Regardless of the reasons for the shift or the dispute, this discussion underscores one of the tensions inherent in levirate marriage. The primary beneficiary of a levirate union is an individual who is not an actual party to it: the deceased. In many societies that practice levirate, the deceased, while no longer physically present, is a legal party to the union. He is recognized as the legal father of the children of the union, and his estate is preserved for his children, both those born before his death and those born to his wife after his death. Furthermore, the deceased retains rights over his wife; she cannot legally remarry, and a levirate union, which is not recognized as marriage, is her only socially approved option for a sexual relationship.

In reversing these stipulations to a levirate union, in making levirate unions almost identical to regular marriages, the rabbis, in a sense, accepted the possibility of nearly incestuous unions that have no tangible benefits to the deceased. This may have made levirate unions more attractive to men, although marriage to one’s sister-in-law may still have been problematic for some. Ironically, having made levirate a more viable option for men, rabbinic sources seem more comfortable with men who refuse a levirate union than with those who choose it. This becomes apparent in rabbinic discussions of halitza.
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Halitza: From Communal Condemnation to Judicial Consultation

While calling on a man whose brother died without children to marry his brother’s widow “and perform the levir’s duty,” Deuteronomy 25 offers no mechanism for forcing a man to perform levirate. Instead, Deuteronomy acknowledges that a man may choose not to marry his brother’s widow and describes a ritual to release the couple from the levirate bond. The ritual is triggered by the widow, who appears before the elders and complains that her “husband’s brother refuses to establish a name in Israel for his brother.” The levir may have told the widow or other family members explicitly that he has no desire to perform levirate, or she may have intuited his reluctance. The elders, alerted by the widow of the levir’s refusal, “summon him and talk to him”; this talk is presumably intended to make him reconsider his stance. If the elders are unsuccessful, the widow removes her brother-in-law’s sandal, spits in his face, and declares, “Thus shall be done to the man who will not build up his brother’s house!”

The description of the ritual in Deuteronomy establishes two things. First, the brother’s refusal is seen as a slight to the deceased, not the widow; he is criticized not for rejecting his sister-in-law, but for denying his brother a name. Even the complaint of the widow references her brother-in-law’s failure to do his duty toward her dead husband; if she feels personally slighted, she does not voice that complaint. Second, the ritual is intended to humiliate the levir. It is performed publicly, and contains elements—the removal of the shoe and spitting—that are clearly meant to embarrass the levir. Furthermore, the ritual is carried out by the widow, who serves as a surrogate for her deceased husband; we can assume that being publicly shamed by a woman is even more humiliating for the levir than being shamed by other men. Finally, the shame of refusal does not end with the completion of the ritual; the man carries it throughout his life, for he is assigned the appellation “the family of the unsandaled one.” A man who denies his brother a child, a name in Israel, deserves, according to Deuteronomy, to be publicly mortified.

The rabbis retain this halitza ritual, but their understanding of its function is markedly different from that of the Torah. The Mishnah portrays halitza as an acceptable alternative to levirate. In some situations,
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when levirate marriage is not possible, *halitza* is the only acceptable re-
response to the levirate bond.48

The Mishnah’s discussion of the *halitza* ceremony focuses on the
three steps of the ritual: removing the sandal, spitting, and reciting the
appropriate formula. Mishnah Yevamot 12:3 states:

*If she removes [his sandal] and spits, but does not recite, her halitza
is valid. If she recites and spits, but does not remove [his sandal], her
halitza is invalid. If she removes [his sandal] and recites, but does
not spit, R. Eliezer says, “Her halitza is invalid.” R. Akiba says, “Her
halitza is valid.”*

This *mishna* suggests that only the removal of the sandal is essential
to the *halitza* ritual. The recital—which marks the ritual as a ritual of
shame—can be omitted without invalidating the rite. According to
Rabbi Akiba, the spitting, an act that conveys the widow’s disgust with
her brother-in-law, can also be omitted.49

The Mishnah’s description of the *halitza* ritual diminishes the sense
that the ritual is intended to shame the levir. Deuteronomy describes a
case in which the widow appears before the elders to complain about
her brother-in-law; the elders then summon the levir. The Mishnah re-
ports, “He and his sister-in-law come to the court,” implying that the le-
vir has chosen *halitza*. The court then “offers him advice that is suitable
for him”; the verse “They summon him and talk to him” is understood to
be judicial consultation rather than an attempt to pressure the brother-
in-law into levirate.

The advice proffered by the court has nothing to do with the deceased
and the preservation of his name. The court’s advice to the levir focuses
wholly on his needs; it is “advice that is suitable for him.” According to
the Bavli:

*If he is young and she is old, or he is old and she is young, they say
to him, “What do you want with a young woman? [Or], what do you
want with an old woman? Go find a woman like you [in age] rather
than bringing conflict into your house.”*50

This advice supports the argument that the focus of levirate has shifted
from the claims of the dead on the living to the desires of the living. The
court makes no attempt to urge the levir to honor his brother’s claim
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on him; instead it asks the levir to consider whether a levirate marriage would be good for him. The Yerushalmi insists that the court may even discourage a levirate marriage when both parties are willing, if there is a disparity in age between the couple.

From Brother-in-Law to Husband: Married Life after Levirate

In some cultures, various factors distinguish a levirate union from a marriage. The levir and his widowed sister-in-law may maintain separate domiciles. The levir may have no financial responsibilities to his sister-in-law or her children. The children of the levirate union may regard the deceased, rather than the levir, as their father. In other societies, the levir and his sister-in-law may live together and their union may be treated like a marriage, although it may require no ceremony.

The biblical narratives and laws that discuss levirate do not offer a clear indication of the status of levirate in ancient Israel. Deuteronomy 25 suggests that the widow becomes her brother-in-law’s wife and that only the oldest child of the union is “accounted to the dead brother.” Judah’s relationship with Tamar after he discovers that she is pregnant is unclear; the narrator’s observation that “he was not intimate with her again” may not reflect normative levirate custom.

The Mishnah insists that a levirate union is a marriage, albeit a marriage legalized in an irregular way. Furthermore, the Mishnah asserts that once the levir marries his widowed sister-in-law, “she is like a wife in every way, save that her marriage settlement is [a lien] on the property of her first husband.” The Bavli claims that a man may divorce the wife he has acquired through levirate with a regular bill of divorce and even remarry her, teaching us that once she becomes his wife, the levirate bond between them is replaced by a marital bond. She ceases to be his sister-in-law, his brother’s wife, a woman forbidden to him, and becomes his wife. Still, the rabbis acknowledge that levirate marriage is not truly regular. The Bavli asks why the woman’s marriage settlement is a lien on the estate of the deceased rather than that of her new husband and answers, “A wife was set aside for him by Heaven.” While the levir chose levirate over halitza, he did not choose this woman as his wife; that choice was made by his brother and circumstance.

The difficulty of being married to a woman whom he did not choose
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may be compounded by the levir’s reaction to being married to a woman who was once his brother’s wife. The Mishnah acknowledges this problem in a discussion about a woman who claims that her levirate union has not been consummated. Commenting on the Mishnah, the Bavli suggests that a man may be uncomfortable having intercourse with “his brother’s wife,” hinting that the levir’s marriage to his sister-in-law does not erase his tendency to think of her as his sister-in-law.54

The rabbis’ interest in levirate is focused primarily on the clarification of the status of a levirate widow, clarification that is made possible through either levirate marriage or halitza. Neither the Mishnah nor the two Talmuds discuss the levirate union in depth, insisting instead that it is a marriage like all other marriages. Legally, the death of a childless man and the subsequent levirate union between his widow and brother transform the relationship between the woman and the man; they move from being in-laws between whom a sexual relationship would be incestuous to man and wife. The levir, in a sense, takes on his brother’s relationship with the woman. The partners to the levirate union are, so to speak, relabeled, becoming “husband” and “wife” instead of “brother-in-law” and “sister-in-law.” The woman retains almost identical relationships to members of her husband’s extended family—she has the same father-in-law and mother-in-law she had during her first marriage—while the levir acquires new in-laws. If the levir was already married, his wife and children find themselves in a new relationship with the yevama; she becomes co-wife and father’s wife where she was previously sister-in-law and aunt. This shift would presumably be a problematic one, given the assumed tension among co-wives. Aside from an acknowledgment that a man might not have the same desire for his former sister-in-law that he would for a wife acquired in a normal fashion, none of the rabbinic sources discuss the difficulty in reorienting one’s understanding of familial relationships.

The Levir and His Family

Rabbinic texts are also silent regarding the extended family’s interest in levirate and the possibility that the family of the deceased and the levir may have been instrumental in promoting or discouraging levirate. Research by anthropologists suggests that, in some cultures, the family of the deceased may play an important role in the decision of a levir or
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widow to enter into a levirate union. Genesis 38 and Ruth 3 indicate an interest on the part of the older generation—the father or mother of the deceased—in encouraging the levir or widow to contemplate a levirate union. The Mishnah and the two Talmuds, on the other hand, assign or assume no such participation. The only hint that family involvement is a possible factor lies in discussions of a minor levir or yevama. While it is possible that a minor levir might, on his own initiative, initiate sexual contact with his sister-in-law, it is also conceivable that a parent, wishing to ensure that the younger brother inherits his brother’s estate, might encourage him to act. The Mishnah also discusses a situation in which both the yevama and the levir are minors and suggests that in such a situation they be allowed to grow up together, presumably with the expectation that they will marry upon reaching adulthood. Such an arrangement would presumably be facilitated by the parents of the levir and possibly the parents of the yevama as well.

Aside from discussions about minors, there is no hint that any member of the family contributed to the levir’s decision to marry or submit to halitza. We can imagine such input—especially on the part of the levir’s wife—but the rabbis show no interest in it. Rabbinic discussions of levirate portray the levir as an individual making a decision that is his alone and that is based on his needs or preferences. There is no indication that the levir is part of a large clan or kinship web that might have interests in his choice.

Conclusions

In its most classic formulation, levirate offers few if any benefits to the man who performs it. He sires children who will be accounted to his dead brother or kinsman, and the deceased’s property is transferred to those children rather than reverting back to his family of origin. In many societies, the “widow” remains de jure the wife of the deceased and does not share a residence with the levir. The only incentive, then, for a man to enter into a levirate relationship is a sense of fraternal or familial obligation.

The laws and narratives of the Hebrew Bible suggest that this was the case in ancient Israel. Resistance to levirate is ascribed to the levir’s unwillingness to father children whom he cannot claim. Assuming responsibility for the property of the deceased is seen as a threat to one’s
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own estate. Levirate is ordered by the head of the family or promoted in
the public square with an audience, suggesting that it is unlikely that a
man would offer to fulfill this duty on his own. Finally, refusal to fulfill
one’s duty is met with divine disapproval or community censure, while
the willing levir is met with community praise.

The ancient sages attempted to make levirate more attractive to a
prospective levir. They assigned him his brother’s estate and paternity
of the children born to the levirate union. They made a levirate union
almost identical to “normal” marriage, while relieving the levir of the
financial burden of the marriage settlement. With these emendations
to the law of levirate, the rabbis transformed a purely fraternal duty into
an advantageous or at least acceptable marriage. Ironically, in so do-
ing, they created a new tension in levirate. Formerly, the tension was
one between duty to one’s brother or one’s family and the desires of
the self. In attempting to eliminate that tension, the rabbis made levi-
rate an institution that, if the deceased was survived by more than one
brother, had the potential to create tension between those brothers. In
the end, the expectation of the rabbis is that each levir will act on his
own interests, not those of his deceased brother, his surviving brothers,
or his extended family. The considerations regarding a levirate union, as
imagined by the rabbis, included the suitability of the widow as a wife
for her brother-in-law, his attraction toward her or the absence of attrac-
tion, and the financial situation. There is neither explicit nor implied
concern for the deceased. Levirate, once an expression of the profound
obligations conferred by kinship, especially between brothers, becomes
a marriage option like all others. The claims of the dead on the living
and the claims of the family on the individual are completely ignored as
the levir makes his decision.
From Wife to Widow and Back Again

The conditions in which Tamar, the widowed daughter-in-law of Judah, finds herself in Genesis 38 capture the essence of what it means to be the widow of a childless man in Israel. Upon the death of his oldest son, Judah orders his second son to marry Tamar and raise up seed for his brother. That son, Onan, avoids impregnating Tamar and dies. Judah now instructs Tamar to live as a widow in her father's house until his third son, Shelah, reaches adulthood. Judah apparently has no intention of allowing Tamar to marry his surviving son, but he does not release her, expecting her to remain a widow indefinitely. Only by taking matters into her own hands and risking her life does Tamar attain her goal, reinserting herself into Judah's family by bearing his children.

The status of a levirate widow (yevama) in rabbinic law is determined by her husband's death without children. She is bound to his brother, expected to bear children that somehow preserve the lineage, or at least the memory, of her deceased husband. She is an anomaly, no longer married but not yet independent. Like Tamar, she is powerless to affect her status. If her husband had left children, the widow would have no obligations to his family; in fact, her husband's heirs would have legal obligations to her. She would be entitled to remain in her husband's home and receive maintenance from his estate. She could serve as the guardian of her husband's estate and his children. When she was ready to leave her husband's home, she could collect her marriage settlement. A widow could remarry, and it appears that remarriage was common.
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The marriage of a widow might be celebrated with less ceremony than that of a virgin, but her consent to betrothal was required, as was a marriage settlement. A widow had complete control over her property and could make any vow she chose.

In contrast, the widow of a childless man had no options. While the death of a husband normally “freed” his wife, the death of a childless man left his wife bound to her brother-in-law. In the event that her husband was survived by a brother, she was obliged to marry that brother. The decision to marry rested with the brother; if he chose to, he could marry her, or if he chose to, he could refuse and submit to halitza. The yevama had no legal right to decline; in fact, the marriage could be performed with no ceremony, against her will, through intercourse. Although the Mishnah sets forth guidelines that are presumably intended to avoid significant stalling by the husband’s brothers, there is no mention of legal recourse for a yevama whose brothers-in-law fail to perform halitza or levirate marriage.

The distinction between the status of the widow of a childless man and that of other widows is indicated linguistically as well as legally. Rabbinic texts refer to the widow of a man with children (whether the children are hers or those of another woman) as an almana. The almana widow has all of the rights just described; she is entitled to her marriage settlement or support from her husband’s heirs. The term used to describe a woman whose husband dies without offspring is yevama, a word that describes her relationship not to her deceased husband, but to his brother, her brother-in-law (yavam). Such a woman is also referred to as shomeret yavam, a woman awaiting her brother-in-law, that is, a woman waiting for her brother-in-law to decide to marry her or release her; the term underscores the woman’s dependence on her husband’s brother.

This chapter considers the position of the levirate widow, or yevama. In examining the situation faced by a levirate widow, we turn first to tannaitic texts, the Mishnah and Tosefta, and then to the Palestinian and Babylonian Talmuds. These texts focus on questions of status, determining when a woman falls into the category of levirate widow and how her anomalous situation can be resolved through levirate marriage or halitza. They also consider the period between the death of the yevama’s husband and the decision of her brother-in-law, determining who is obligated to support her and what power she has to manage her property.
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and make vows. We will consider the conditions that render a woman a *yevama* rather than an *almana*, her status during the waiting period between her husband’s death and her brother-in-law’s action, the resolution of her status through levirate or *halitza*, and her situation after her status is resolved. Finally, we will look at the *yevama’s* relationship to her family of origin and the family of her late husband, in an attempt to determine the factors that might have influenced her preference for levirate or *halitza*, insofar as she might have any choice in the matter.

Rabbinic material about levirate suggests that a *yevama* is a study in contrasts and complexity. Her husband is dead, but she does not have the freedom of an *almana* widow. She is no longer married but is still in some ways bound by ties created by her marriage. She is not the wife or even the betrothed of her brother-in-law, but she has a legal relationship to him that prescribes some of her actions and precludes her remarriage to another man. Even in those areas in which she is treated like a betrothed woman, the parallel is imperfect, because unlike the betrothed young woman most often assumed by the Mishnah and Tosefta, the levirate widow is no longer under the authority of her father. Her relationship to the family of her deceased husband and his brothers—one of whom may become her husband—is unclear as well; while her brothers-in-law have some claim on her, that claim is not as strong as that of a fiancé or husband. No male relative can exercise complete control over the *yevama*, but neither is she fully autonomous.

This irregular status may explain the anomalous position of the levirate widow, a woman who can be forced into a levirate union against her will but who dominates the ritual of *halitza*. Moreover, the Mishnah acknowledges that in some cases a levirate widow may actively resist levirate marriage. These *mishnayot*, discussed below, portray the *yevama* thwarting the power of her levir, and to some extent the law, through speech. This “subversive” activity makes the *yevama* doubly problematic; her status is irregular and must be resolved, but any attempt on her part to play an active role in that choice, a role other than that assigned to her by the rabbis, threatens the stability of a system that seeks to control women and their sexuality.

While the levirate widow has less control over her future than a normal widow or an unmarried woman who has reached her majority, there is a move in the Mishnah and Tosefta to improve her situation, to give
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her a greater voice in determining her future. As we shall see, there are instances in which a yevama’s claims may lead a court to encourage her brother-in-law to release her from the levirate obligation. There is also a move toward “normalizing” levirate marriage, including a requirement that the yevama consent to the union.

What motivates this apparent concern for the levirate widow, or the willingness to alleviate her situation? For Judith Romney Wegner, the position of the levirate widow can be explained by her “relationship to a man (her husband’s brother) who has an exclusive claim on her biological function,” a claim that “diminishes her personhood” and “reduces her to the status of chattel.” Wegner’s theory that the Mishnah treats a woman as chattel when a specific man has a claim on her sexuality explains the powerlessness of the levirate widow to choose levirate marriage or halitza, as well as aspects of the laws regarding her property and vows. Aspects of levirate law that recognize the levirate widow as a person with rights—most notably her role in the ritual of halitza—are explained by Wegner as the sages’ perception of the levirate widow’s “dormant personhood.”

A very different reading of the Mishnah’s treatment of women is offered by Judith Hauptman. In Rereading the Rabbis, Hauptman suggests that comparing the status of women in rabbinic law with their status in contemporary Western societies ignores the fact that the rabbis were products of their time and place, and judges them by contemporary standards they cannot possibly meet. She also rejects a comparison between ancient rabbinic law and contemporaneous Greco-Roman law, because “[a] religious legal system, much more than a secular one, is bound by a commitment to maintain continuity with the practices of the past and accept the authority of the texts of the past.” Instead, Hauptman proposes that we compare rabbinic law to that found in the Torah, asking, “Without violating the letter of the law, were [the rabbis] seeking to accord [women] more rights and a higher status than that accorded them by the Torah? Or were they introducing new stringencies that would make women’s lives more difficult?” She argues that while the rabbis “perpetuated women’s second-class, subordinate status,” they also “began to introduce numerous, significant, and occasionally bold corrective measures to ameliorate the lot of women.” Although her work does not deal with levirate marriage, I assume that Hauptman would find in
Mishnah-Tosefta Yevamot, particularly in the increasing willingness to employ halitza rather than levirate marriage, a desire among the rabbis to protect women from the abuses inherent in the levirate law.16

In my own, earlier study of levirate marriage in the Mishnah, I note that the Mishnah finds anomalies problematic and seeks to resolve situations in which the status of a person or object is unclear.17 It is possible that one incentive for the rabbis’ growing willingness to normalize levirate unions, thus granting levirate widows some of the power that other women have to accept or reject a prospective husband, may be an outgrowth, perhaps even an unintended benefit, of the desire to make the status of the levirate widow less irregular. Moreover, I note that the Mishnah seems far more concerned that the levirate bond be resolved in some way than that it result in a levirate marriage.18 Perhaps the Mishnah’s embrace of halitza led to a willingness to give the levirate widow a greater voice in determining that halitza, not levirate marriage, was the proper response to the bond between her and her brother-in-law. If so, the improvement in the status of the levirate widow is not, as Hauptman argues, an indication of the rabbis’ concern for women, but simply a willingness to endorse alternatives to levirate marriage.

I will argue that some of the rabbis’ responses to the situation of the levirate widow are attempts to create “acceptable” solutions to the problems posed by the yevama’s status. What makes these solutions acceptable is that they are male controlled and rabbinically generated. As such, they serve as a “proper” alternative to the yevama’s attempts to avoid levirate marriage through vows and claims against her levir. The yevama is dangerous both because her status is unclear and because she may “act out,” and perhaps to a lesser degree because the Torah makes her the active party in halitza. The rabbis offer “safe” methods to resolve the status of the yevama. In doing so, they expand her options, while channeling her power into acceptable avenues or expropriating it for themselves.

The Bible looks at the widow of a childless man in the context of family relationships. It presents her interacting with her husband’s brother, father, and mother, and generally suggests her interest in remaining part of her late husband’s family. In contrast, rabbinic literature focuses only on the connection between the yevama and her brother(s)-in-law, and acknowledges that she might be reluctant to become her brother-in-
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law’s wife. While concerned with their own authority over the yevama and the process of resolving the levirate bond, the rabbis display a lack of concern about the widow’s connection to the deceased or his family. The rabbinic construct of levirate thus testifies to the weakening of the extended family’s control over the individual, in this case the levirate widow.

Almana or Yevama? Determining Eligibility for Levirate and Halitza

Ordinarily, the death of a spouse ends marriage as understood by the rabbis, and many of the links between the surviving spouse and his or her partner’s family are severed as well. A surviving spouse is expected to mourn the death of a husband or wife. A husband inherits his late wife’s property; a wife may collect her marriage settlement from her husband’s estate. Certain restrictions remain on the surviving partner with regard to the deceased spouse’s family; a man may not marry his deceased wife’s immediate relatives, while a woman may not marry her husband’s close kin. A woman is expected to wait three months before remarrying to avoid any confusion as to the paternity of her offspring, but after that period she may do as she chooses.

The death of a childless man has very different consequences for his widow. Her ties to her husband, or to his family, are not severed by his death. In fact, the husband’s death creates a new bond, a bond between his wife and his brother(s). That bond, known as ziqqa, has powerful legal consequences for both parties, but especially for the woman. One might argue that she is, on some level, still her husband’s wife and that her brother-in-law now takes the place of the deceased. One could argue that the levirate widow is inherited, together with her husband’s property, by his brother(s). However one explains the levirate bond, it forms a powerful and permanent connection between the levir and his sister-in-law. Even if the couple undergoes the halitza ritual, dissolving the levirate bond, they have the status of a divorced couple; they are forbidden to marry each other’s relatives.

When is a widow regarded as a yevama or shomeret yavam, a woman who must submit to levirate marriage or halitza? First, her husband must have died without children (or grandchildren) by her or any other woman. Her husband must also have a surviving brother, a brother...
who was born during the lifetime of the deceased and who had the same father. It must be clear that the widow is not pregnant; if she is, her status cannot be resolved until the child is born.

Even when these conditions are met, levirate marriage may not be possible. The relationship between the yevama and her husband’s brother must be determined before marriage, or even halitza, is mandated. If the yevama is a close relative of her brother-in-law as well as his sister-in-law, neither levirate nor halitza is permitted. Furthermore, because co-wives are treated as a unit for the purpose of levirate, if any one of a man’s widows is closely related and therefore forbidden to his brother, all the widows are exempt from levirate marriage and halitza. In some cases, halitza may be required but levirate marriage forbidden; this is the case in situations in which the marriage of the widow, or in certain circumstances that of her co-wife, to the deceased was problematic.

There may also be circumstances surrounding the widow, her deceased husband, or his brother that obviate the requirement for levirate marriage. If the deceased was a eunuch, a person of indeterminate gender, a freed slave, or a proselyte, there can be no levirate marriage or halitza. Neither a sterile woman nor a eunuch can enter into a levirate marriage, nor are they required to perform halitza.

The rules found in the Mishnah and the Tosefta clearly indicate that not all widows of childless men will be treated as levirate widows. Tannaitic texts do not indicate what happens to a woman who is exempt from the requirement of levirate. We can assume that she is treated like a “regular” widow, and may collect her marriage settlement and remarry as she chooses. Nor is there any way to know how a woman’s status was determined upon the death of her husband. Was she expected to know whether or not she was under the obligation to await her brother-in-law’s decision, or was it the responsibility of her husband’s family to determine her eligibility and that of the brother-in-law for levirate? The Mishnah takes for granted that individuals will be able to determine the necessity of levirate or halitza or assumes they will consult the appropriate authorities.

Woman in Waiting: The Levirate Widow

In the event that all or some of a man’s widows are eligible for levirate with all or some of his surviving brothers, all of the eligible widows and
levir are bound to each other until the situation is resolved through a single act of levirate or halitza between one yevama and one levir. At least three months should pass between the death and the action resolving the bond; this waiting period ensures that none of the women are pregnant. A pregnancy results in a longer waiting period; if a viable child is born, all of the widows are free, but a miscarriage or stillbirth will necessitate levirate or halitza.34

When her bond to the levir is clear, the yevama’s personal status is ambiguous. She is simultaneously like and unlike a betrothed woman. On one hand, she is prohibited to all men except her husband’s brother(s), just as a betrothed woman is prohibited to all men other than her betrothed. However, the levirate widow, unlike a betrothed woman, has no voice in her betrothal; her bond to her brother(s)-in-law is the automatic result of her husband’s death. No ceremony is required to activate the levirate bond; it comes into existence with the death of the woman’s husband. In addition to waiting three months, the levirate widow must wait while her brother-in-law decides what to do. If her husband had several brothers, the levirate widow must wait while the brothers decide which of them will marry or release her; any preference she might have is irrelevant.35 The levirate bond is more complex than betrothal. While a woman can be betrothed to only one man, the levirate widow may be equally bound to a number of brothers-in-law; while only one of them should marry her or submit to halitza, each may have the identical right to choose one of these courses of action. Levirate marriage can be finalized without her consent, even through an act of rape.36

Like all other women, the levirate widow faces severe penalties if she misreads her situation. If she and her brother-in-law enter into a levirate union and then discover that she is pregnant by her first husband, she must leave her new husband. She must also leave if the paternity of the child is uncertain; in either case, the couple is liable for an offering, indicating an improper action on their part.37 If she remarries or enters into a levirate marriage on the basis of incorrect information, the children she bears may be declared mamzerim.38 While all widows are expected to wait three months before remarrying to avoid such situations, the levirate widow is particularly vulnerable; her husband’s death creates the expectation that she is available to the levir, and she can be forced into a levirate marriage, which requires no ceremony and no consent.

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The ambiguity of the *yevama’s* status is indicated by the laws that govern her economic and personal life during the period between her husband’s death and the occurrence of levirate marriage or *halitza*. Her control over her vows is unclear. Rabbi Eliezer grants the levir power to annul the vows of the *yevama*, just as a husband has the power to annul a wife’s vows, while Rabbi Akiba denies him that power. Rabbi Joshua offers a compromise position, ceding the power to a single levir while withholding it in a situation where there are several surviving brothers.39

Who supports the *yevama* while she waits for her brother-in-law to make his decision? Tosefta Yevamot 6:3 ties the obligation of the levir to that of the deceased husband. If the couple was married when the husband died, the levir is obligated to support the *yevama*; if the couple was betrothed, in which case the husband was not yet obligated to support his wife, the levir is not obligated. This rule is contradicted (or modified) by another Toseftan *halakha*:

_The first three months [after the husband’s death] the yevama is supported by the husband [that is, by his estate]; after three months, she is not supported by the husband or the levir. If the levir has appeared in court and then flees, she is supported from his property._40

This rule, read in conjunction with the prohibition against levirate marriage or *halitza* until three months after the death of a woman’s husband, puts the *yevama* in a compromised financial position. If the levir delays his decision beyond the three-month waiting period, she has no means of support. She, however, has no power to force him to marry or release her. Unless she has her own property, a *yevama* could easily find herself with no means of support at a time when she is unable to collect her marriage settlement. Her ambiguous status is also indicated by her status regarding *teruma*, the priestly portion. A childless widow whose father is a priest may eat *teruma* in her father’s house.41 A *yevama*, however, cannot eat *teruma* if her father is a priest, even though her husband is dead; her bond to the levir maintains her connection to her husband’s non-priestly family. At the same time, that bond is not strong enough to allow her to continue eating *teruma* with her husband’s priestly family if she was born into a non-priestly family.42 These rules are purely theo-
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retical, since teruma was no longer distributed, but they underscore the limbo in which a levirate widow finds herself as she waits for her brother-in-law’s decision. She is no longer a full member of her husband’s family, but she is still bound to the family in some way.

The Mishnah also discusses the yevama’s control over her property while she waits for the levir’s decision:

A woman waiting for a brother-in-law (shomeret yavam) who received property—the School of Shamai and the School of Hillel agree that if she sells or gives away [her property], her decision stands. If she dies while awaiting levirate marriage or halitza, what happens to her marriage settlement and the property that comes in and goes out with her? The School of Shamai says: The heirs of the husband divide it with the heirs of [her] father. The School of Hillel says: The property remains in the possession of those who have a presumptive claim on it. The marriage settlement is subject to the presumptive claim of the heirs of the husband. The property that comes in and goes out with her is subject to the presumptive claim of the heirs of [her] father.43

This mishna highlights the ambiguous status of the levirate widow. While she waits for her brother-in-law to decide whether he will marry her, she has full control over her property. In this sense, she is like a woman who receives property when she is neither married nor betrothed.44 The levirate widow has greater control over her property than does a betrothed woman, who, according to the School of Hillel, should not sell property, since the betrothal gives her husband-to-be some stake in his future wife’s assets.45

At the same time, the levirate widow is not like an ordinary widow. The natural heirs of a widow are her children; in the absence of children, one would expect a widow’s property to devolve on members of her family of origin. Here we learn that the property of a levirate widow may be claimed by her family and that of her husband. The levirate bond ties the widow to her husband’s family, allowing them to make a claim on all of her property (according to the School of Shamai) or her marriage settlement (according to the School of Hillel). The Mishnah does not speak of a claim on behalf of the levir, which would presumably have to derive from his status as her husband-to-be, but of the claims of “the heirs of
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[her] husband.” Her tie to the levir is, on some level, a bond to the deceased and to his need for an heir; the claim of his heirs—presumably his father or brothers—on her estate suggests that she is still, in some sense, the wife of her now-deceased husband.

Responding to the Levirate Bond

There are two legitimate responses to the levirate connection that is established between a man and his childless brother’s widow. The bond can be affirmed and brought to completion through levirate marriage, or it can be dissolved through halitza. While Deuteronomy 25 indicates that levirate marriage is the preferred choice, the Mishnah presents levirate marriage and halitza as equally appropriate responses.

At first glance, the levirate widow has no power to determine her future. According to Deuteronomy, it is the levir who decides whether to marry his sister-in-law or submit to halitza. This impression is reinforced by the behavior of Tamar and Ruth. Tamar cannot force Judah to arrange her marriage with Shelah; she can only trick Judah into impregnating her. While Naomi sends Ruth to the threshing floor, all Ruth can do there is ask for Boaz’s protection; she cannot demand that he marry her or voice a preference for Boaz over the nameless kinsman mentioned in Ruth 4.

The inability of the levirate widow to affect her status is affirmed in Mishnah Yevamot. We learn that sexual intercourse between a levir and his sister-in-law effects levirate marriage, even if the sexual act is non-consensual or is not understood by the woman to be for the sake of effecting levirate marriage. The widow’s surviving brothers-in-law are all legitimate candidates for levirate marriage, but she has no opportunity to choose from among them. Similarly, although any one of a man’s wives could enter into a levirate marriage, the choice as to which wife to marry is the brother-in-law’s; the wives cannot decide among themselves which one should marry him. The Mishnah allows a man whose four brothers die to marry one of each of the brother’s wives. Though such a scenario is unlikely, the rule makes it clear that a yevama may find herself joining a household that includes at least one other wife, should her levir choose to marry her.

Because a sexual act, even one not intended to effect levirate mar-
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riage, affirms the bond between the levir and his sister-in-law, the potential for abuse or mischief in levirate relationships is enormous:

*Rabban Gamaliel says: There is no bill of divorce after an earlier bill of divorce, nor is there ma’amar (levirate betrothal, instituted by the sages) after an earlier ma’amar, nor is there sexual intercourse after an earlier act of sexual intercourse, nor is there halitza after an earlier halitza. The sages say: There is a bill of divorce after an earlier bill of divorce, there is ma’amar after an earlier ma’amar, there is sexual intercourse after an earlier act of sexual intercourse, and there is halitza after an earlier halitza.*

According to Rabban Gamaliel, an act intended to affirm or dissolve the levirate bond renders any subsequent act, either by one levir with a second *yevama* or by another levir with the same *yevama*, legally irrelevant. Once a *yevama* has undergone *halitza* or levirate marriage, or received a declaration of intent from one of her brothers-in-law to perform levirate marriage, her status and that of her co-wives is determined. The sages, however, disagree, arguing that a second act has legal consequences for the woman or women involved. A levir who, for whatever reasons, approaches both of his sisters-in-law, or two brothers who both attempt to resolve the levirate bond with their sole sister-in-law, suffer no legal consequences beyond negating the possibility of an ongoing levirate marriage. The Mishnah imagines the possibility that a levirate widow might be approached by several of her brothers-in-law; if two of them were to have sexual intercourse with her, the levirate marriage created by the first act would have to be abandoned. Furthermore, while levirate marriage or *halitza* with one *yevama* would free her co-wives to remarry, this *mishna* acknowledges that one brother or two brothers might have intercourse or perform *halitza* with two of their brother’s widows, altering the status and future eligibility of both women to remarry.

The powerlessness of the levirate widow under rabbinic law stands in sharp contrast with the status of an Iranian wife whose husband dies without a son. Under Iranian law, the *pādixšāy* wife, a wife taken under a highly restrictive form of marriage, would inherit a portion of her husband’s estate and could obtain a double portion if she served as his designated successor and entered into a levirate union to provide the deceased with a son. The levirate union would be a *cāgarīh* marriage,
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one in which the new husband ceded paternity of the children to the wife’s first husband and she maintained control of her dead husband’s estate. Levirate was not restricted to blood relatives, so it is possible that the widow was able to exercise some control or influence in the choice of levir. While Iranian law makes levirate a financially beneficial arrangement for women, rabbinic law does not; instead the rabbis focus on making levirate marriage a financially attractive option for men. The levirate widow has none of the power allotted to her Iranian counterpart but can be forced into a levirate union by any one of her husband’s brothers.

The rabbis do offer some mechanisms to reduce the likelihood that a levirate union will be initiated through sexual intercourse or without the consent of the woman. One type of rabbinic response to the anomalies of levirate marriage was the introduction of rules that “normalized” levirate unions, making them more like regular marriages. The primary beneficiary of these changes, as demonstrated in the preceding chapter, was the levir, who through levirate marriage was able to claim his brother’s property while acquiring a wife and retaining paternity rights to the children born of the levirate union. While these laws may or may not have been intended to improve the position of the levirate widow, they certainly gave her a greater voice in choosing or rejecting a levirate marriage.

Because the death of a childless man automatically generated a bond between his widow and his brother, levirate marriage could be formalized through sexual intercourse alone; there was no need for the levir to betroth his widowed sister-in-law. Moreover, even nonconsensual sexual intercourse between the levir and the yevama “completed” the marriage. This removed any need for the consent of the yevama to the union, creating another distinction between levirate marriage and regular marriages, which do require a woman’s consent. The Mishnah introduces an additional step in affirming the relationship between the levir and the yevama, and in doing so makes levirate marriage more like other unions. Betrothal is not required for levirate marriage, because the woman “has been acquired for him by a divine act,” but a similar act, known as ma’amar or declaration, is recommended. The Mishnah states, “If he made a declaration [of his intent to marry his widowed sister-in-law] and then had intercourse with her—behold this is the proper way.” The Mishnah offers no indication of the content of the declara-
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tion, but the Tosefta suggests language remarkably similar to that employed in betrothal, defining *ma’amar* as the statement “Behold you are consecrated to me” and requiring the exchange of money or a document stating the levir’s intent to marry his sister-in-law. Moreover, the Tosefta insists that “just as betrothal does not have legal effect without the consent of both parties, so too *ma’amar* does not have legal effect without the consent of both parties.”59 While sexual intercourse, without a prior declaration and without consent, would still make the *yevama* her brother-in-law’s wife, the preferred method of levirate marriage requires declaration and the consent of the woman.60

Let Me Hear Your Voice: The *Yevama’s* Role in Levirate Marriage and *Halitza*

The silence and passivity of the levirate widow end at the moment her brother-in-law opts for *halitza* over levirate marriage. Formerly forced to wait for the levir’s decision, the *yevama* now takes center stage in the ritual of release. While the ritual as described in Deuteronomy is intended to humiliate a man who refuses to do his fraternal duty, the Mishnah offers it as an acceptable and sometimes preferred alternative to levirate marriage. For the *yevama*, it may also serve as a release of tension and frustration after months of waiting for the levir’s declaration.

The ritual, performed before three judges, has three parts: the removal of the levir’s shoe, spitting in front of him, and recitation. Each of these acts is performed by the levirate widow. The language of the Mishnah reflects the active nature of the woman’s role in the ceremony.

*If she performs halitza with a shoe, her halitza ritual is valid; if she performs halitza with a cloth shoe, her halitza ritual is invalid… If she performs halitza with a sandal that does not belong to him, a wooden sandal, or with the left [shoe] on the right [foot], her halitza ritual is valid. If she removes [the shoe] and spits, but does not recite, her halitza ritual is valid. If she recites and spits, but does not remove the shoe, her halitza ritual is invalid. If she removes the shoe and recites, but does not spit, Rabbi Eliezer says: Her halitza ritual is invalid. Rabbi Akiba says: Her halitza ritual is valid.*

The actions that make up the ritual of *halitza* are all performed by the *yevama*. The verb used to describe her acts is an active verb; she “re-
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leases,” while the man “is released.”62 When evaluating the effectiveness of the ritual, the Mishnah speaks of “her” halitza ritual, the ritual performed by the levirate widow, and not “his” ritual, despite the ritual having been chosen by the levir.

Only in the final mishna of Mishnah Yevamot 12 do we find an attempt to position the levir at the center of the halitza ritual. This mishna describes the ritual with the man as the primary subject:

The ritual of halitza [is as follows]: He and his sister-in-law come to the court, and they give him advice that is appropriate for him, as it is written, “The elders of his town shall then summon him and talk to him” (Deut. 25:8).63

The Mishnah ignores the preceding verse of Deuteronomy, which describes the yevama initiating the halitza ritual by appearing before the elders and declaring, “My husband’s brother refuses to establish a name in Israel for his brother; he will not perform the duty of a levir.” A ritual that, according to the Torah, allowed the yevama to express her disgust (and that of the community) with a man who would not do his duty to the dead becomes a ritual chosen by the man himself as a way of discharging his obligation. While acknowledging the woman as the primary actor in the halitza ritual, the Mishnah insists that the decision to enact the ritual is the man’s.64 Here the Mishnah reverts to form, viewing men as subjects and women as objects in matters involving marriage and sexuality.

Tannaitic sources indicate some reluctance to force a woman into a levirate union. The School of Hillel indicates that a minor orphan whose husband dies may exercise the right of refusal against her brother-in-law, even if she had not exercised it against her husband, thus obviating the need for levirate marriage or halitza.65 A woman could reject a levir with physical deformities or a repulsive job, even if she had accepted the same deformities or job in her husband.66

There were also conditions under which the sages were willing to ask or urge a levir to release his sister-in-law, even if he preferred marriage. One such case involved a claim by the woman that her levir had not consummated their union:

A yevama who said within thirty days of the marriage, “I have not had intercourse”—they force him to perform halitza.67 [If she
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makes the claim] after thirty days, they ask him to perform halitza. If he acknowledges [that there has been no intercourse], even [if the claim is made] after twelve months [of marriage], they force him to perform halitza. 68

This mishna recognizes that sexual intercourse is an important component of marriage. Furthermore, it is the essence of levirate marriage, which is performed with the hope of begetting offspring. Just as there is no point to a woman entering into a levirate union with a man who is known to be sterile, there is no point to a levirate marriage without sexual intercourse. Such a union also suggests that the levir’s motives for agreeing to levirate marriage were problematic. 69 Tosefta Yevamot 13:7 includes a version of this rule, adding that the levir is compelled to release the yevama even if he denies her claim. If one of the partners claims that there has not been intercourse while the other claims that there has been, the union should be dissolved; no more credence is given to the man’s claims than to those of the woman.

A woman may also seek to avoid levirate marriage through a vow. The vow in question does not mention levirate marriage, but the woman’s renunciation of benefiting from her brother-in-law in any way, which makes such a marriage impossible:

A woman who vows to derive no benefit from her husband’s brother—[if she makes the vow] in her husband’s lifetime, they force him to perform halitza. 70 [If she makes the vow] after her husband’s death, they ask him to perform halitza. But if she intended this [that is, to avoid levirate marriage through the vow], even if [she made the vow] in her husband’s lifetime, they ask him to perform halitza. 71

The Mishnah acknowledges that the vow may have been a deliberate effort by the woman to avoid levirate marriage. The vow may have been made during her marriage, when her husband was ill or dying, with a view to avoiding levirate. Even so, the Mishnah apparently has no intention of forcing the woman into a union she clearly wishes to avoid. While the levir may marry her (and then presumably annul her vow), there is a willingness to counsel him against such an action.
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The Status of the Woman after Levirate or Halitza

The actions of the levir—his performance of levirate marriage or his submission to halitza—transform the yevama. The Mishnah teaches that when the levir marries his sister-in-law, "she is like his wife in every respect." Although the marriage settlement is the one agreed to by the first husband, the levir now has all of the obligations and rights of a husband. If halitza is performed, the yevama is treated in some ways like a divorcée; she and the levir are forbidden to marry each other’s close relatives, and she is not eligible to marry a priest. The resolution of the yevama’s status, her transformation into a wife or a widow, ends the Mishnah’s interest in her. Her status, it seems, owes more to the act of her brother-in-law than the death of her husband; her status as a woman who has undergone halitza (halutza) is more like that of a divorcée than a widow, insofar as she cannot marry a priest. From the Mishnah’s point of view, her status is resolved; she is either married to her former brother-in-law or she is a “free” woman, able to marry if she chooses. The marriage of a levir and a yevama requires no additional consideration, but is regulated by the laws of marriage detailed elsewhere in the Mishnah.

We see in the Mishnah and the Tosefta an attempt to clarify various aspects of the position of the levirate widow. While the tannaim do make levirate marriage more “regular” through the introduction of a declaration of intent to marry, the position of the yevama remains anomalous. She has more freedom than a married woman with respect to her vows and her property, but less freedom than a widow. The Mishnah and Tosefta highlight these anomalies but offer no explanation for them. Tannaitic sources also highlight the tensions surrounding the yevama, bound to her brother-in-law and subject to his delays and decisions, but playing the active role in the halitza ceremony. While levirate marriage can be formalized against the will of the yevama, she may also be able to avoid a levirate union through a vow or protest.

Widow or Not? Talmudic Attempts to Clarify the Status of the Yevama

Both the Bavli and the Yerushalmi offer analyses of the mishnaic material on levirate. The talmudic material emphasizes the two “problems” inherent in being a levirate widow: her unclear status and the ways in
which she acts out both her power and her lack of power. As we have already seen, while the levirate widow cannot in theory exercise the power granted to other women—the power to consent to or reject a marriage partner—she exercises exceptional power in the ritual of halitza. Although rabbinic divorce is controlled entirely by the husband, with the wife the silent recipient of her bill of divorce, the levirate widow is the primary actor in the halitza ritual. She spits at, removes the shoe of, and verbally berates her levir, while he stands silent and passive. This alone presents a disturbing picture of the yevama as a woman with a powerful voice raised in protest against her brother-in-law’s decision. In addition to clarifying and regularizing the status of the yevama, the Bavli, I will demonstrate, seeks to rein in the yevama by transferring some of her power to the sages.

Betrothed Woman, Married Woman, or Widow?

Judith Romney Wegner posits that the Mishnah recognizes six types of women: the minor daughter, the wife and the levirate widow, the emancipated daughter, the divorcée, and the normal widow. The first three types have minimal rights because their sexuality is controlled by male relatives; the latter three have broader rights because their sexuality is not assigned to a man. In Wegner’s taxonomy, the levirate widow’s sexuality is assigned to her levir, and she is more chattel than person.

The levirate widow, in fact, has a more problematic status than the other women in Wegner’s taxonomy. She is no longer her father’s minor daughter, and even if she were to return to her father’s home while waiting for the levir’s decision, she would not be categorized as an emancipated daughter. She is neither wife nor widow, and her relation to the levir is not precisely like that of a betrothed woman to her future husband.

Rather than discuss the levirate widow’s status in the abstract, the Talmuds consider it in relation to her behavior during the period between her husband’s death and her levirate marriage or halitza. Her status before her husband’s death is clear; she is a wife. Once her levir has acted, she will be either a wife or a widow, albeit a widow with some of the qualities of a divorcée. The question that underlies the Talmuds’ discussions of the levirate widow is the precise nature of her relationship to the levir. Is she to be treated as his betrothed, despite the ab-
sence of a formal betrothal? Is she to be regarded as his wife, despite the fact that the levirate union has not been—and may never be—consummated? Or is she an independent woman, like an emancipated daughter or a widow? What is the nature of the bond between the levir and the levirate widow, and how does it restrict the latter’s behavior?

Mishnah Yevamot 4:3 discusses the power of the yevama to manage her property and the assignment of that property if the yevama dies before her brother-in-law marries or releases her. The first section of the Mishnah accords the yevama the right to dispose of her property as she wishes. The second section provides for the division of the yevama’s property between “the heirs of her husband and the heirs of her father” in the event of her death.

Wegner regards the second section of this mishna as proof that “[h]ere the sages view the yevamah purely in terms of men’s proprietary claims on her.” At the same time, she acknowledges that the levirate widow has greater control over her property than a betrothed woman. This strengthens Wegner’s argument that women are treated as chattel in the Mishnah only when a man has control over a woman’s sexuality. The control of the levir over his brother’s widow is incomplete; thus his claim on her property is weak.

Discussions of this mishna in both the Bavli and the Yerushalmi focus on clarifying the status of the levirate widow. Both sugyot begin by questioning the apparent contradiction between the first and second parts of the mishna. The power of the yevama to sell or give away property suggests that she is entirely independent of the levir. In contrast, the levir’s ability to claim a portion of the levirate widow’s property after her death suggests that he does have a claim on her, since inheritance of a woman’s property is ordinarily reserved for her husband.

“A levirate widow who inherits property . . .”

A. Here [in the first part of the mishna] you say, “If she sells or gives it away, her transaction stands.” “If she dies, what happens to her marriage settlement?” And here [in the latter part of the mishna] you say, “Let the heirs of the husband and the heirs of the father divide it.”

B. R. Yose b. Hanina said: In the case in which you say, “If she sells or gives it away, her transaction stands,” the property came to
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her before she became a levirate widow. In the case in which you say, “Let the heirs of the husband and the heirs of the father divide it,” the property came to her after she became a levirate widow.

c. If property came to her before she became a levirate widow, and produced usufruct after she became a levirate widow, it is as if it came to her after she became a levirate widow.

d. R. Zera said: The levir in this case is a problem for the School of Shammai, for they are uncertain if he is equivalent to a husband or not. If he is equivalent to a husband, he should inherit all [her property]. If he is not equivalent to a husband, he should inherit nothing. Since it is uncertain, “Let the heirs of the husband and the heirs of the father divide it.”

e. For the School of Hillel, it is clear that he is equivalent to a husband and inherits everything.

f. [As for the property that the School of Hillel allots to the heirs of her father, it is because] even his brother [i.e. the deceased] is entitled only to the usufruct. [Such property reverts to the wife’s family even if her husband survives her.]

g. R. Hoshaya taught: The heirs who inherit her marriage settlement are liable to bury her.

h. R. Yose said: If R. Hoshaya had not taught that law, it would have been a problem for us.

i. Since she has no marriage contract, she also would have no [rights to] burial [by the levir or his heirs].

j. This is a problem: If a woman has no marriage settlement, is it possible she has no rights of burial! A woman, even if she has no marriage settlement, certainly has rights of burial.

k. But in this case, if she has a marriage settlement, she has rights of burial, and if she has no marriage settlement, she does not have rights of burial.77

The problem addressed by the Yerushalmi [A] is an apparent contradiction between the two sections of the mishna. The first section allows a yevama to do whatever she chooses with her property. This freedom suggests that no man has any control over a levirate widow. Her power to manage her property is comparable to the power of an emancipated daughter,
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widow, or divorcée. The second part of the mischna, however, recognizes the right of her husband’s family to claim a portion of her property if she dies before her status is resolved. This implies that the levirate widow is somehow tied either to her late husband or to his brother.

Yose b. Hanina [B–C] attempts to resolve this contradiction by assigning each section of the mischna to a different situation. He suggests that the first rule applies when the property in question came to the woman before she became a yevama. Since she had no ties to her brother-in-law when she received the property, he has no right to manage her property until he marries her. The second rule, according to Yose, applies when the property came into the woman’s possession after she became a yevama; since she was bound to her brother-in-law when she received the property, he has a claim on it in the event of her death. This distinction leaves open the question of a levir’s right to enjoy property received by his sister-in-law while she awaits his decision when she does not die. Perhaps the Yerushalmi assumes that the levir will soon gain control over the property through levirate marriage or lose it through halitza and therefore does not press the issue. For Yose, the yevama is like a wife, in that the levir has a claim on her property in the event of her death and enjoys the usufruct of her property while she is alive.

R. Zera [D–F] considers the understanding of the School of Shammai and the School of Hillel based on the second part of the mischna. A husband, he notes, would inherit all of his wife’s property. Since the School of Shammai proposes that the property be divided between her husband’s family and her family of origin, they must be uncertain as to the relationship between the levir and the yevama. For the School of Hillel, the levir is equivalent to a husband and inherits all the property a husband would inherit. This explanation offers no clarification of the first part of the mischna; if, according to the School of Hillel, the levir is like a husband, why can the yevama sell and gift property?

The language of the mischna compounds the confusion surrounding the yevama. In the event of her death, her property is claimed by “the heirs of the husband and the heirs of the father.” As a childless, unmarried woman, she has no obvious heirs; neither group is referred to as “her heirs.” Furthermore, who is the “husband” referenced in the mischna? Is the mischna speaking of the claim of the levir or that of her deceased husband? Is her property being claimed by her deceased husband’s father or
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his brothers, and if so, are they claiming it as part of the deceased’s estate or because of the bond created between the yevama and the levir(s)? If, according to Rabbi Yose, the levir is like a husband, why doesn’t the Mishnah explicitly mention the levir as the heir of the yevama?

In some cultures, a woman remains her husband’s wife even after his death; she may enjoy the right to use his land, and any children she bears will be legally his. In such a situation, it would make sense to speak of the rights of “the heirs of the husband” to the levirate widow’s property. The sages of the Mishnah and the Talmuds, however, do not believe that marriage outlasts one of the partners. If we read “the heirs of the husband” as referring to the heirs of the levir, the mishnah makes no sense. The levir is presumably alive; were that not the case, the woman would have been an almana widow, not a yevama, and her late husband’s family would have no claim on her property. The question remains: Why should the heirs of a woman’s deceased husband have a claim on her property? Is the levirate widow still a part of her husband’s family, and if so, what is her relation to the family in general and to her husband’s brother or brothers in particular?

This question is complicated by the remainder of the sugya, which discusses a levitate widow’s right to burial. A husband has an obligation to bury his wife, but it is unclear whether that obligation devolves on the levir, since he is not her sole heir and has no obligation to endow her with a marriage settlement. A yevama does not collect her marriage settlement from her husband’s estate while she awaits her brother-in-law’s decision. He can therefore claim that he is inheriting the marriage settlement from his brother’s estate, not from the yevama, and has no obligations to her. This discussion suggests that the levir is not equal to a husband under the law; his obligations to the yevama are not as great as those of a husband and his rights to her property are not as strong.

Like the Yerushalmi, the Bavli focuses on clarifying the status of the yevama given the rules found in the mishna. The Bavli offers multiple “solutions” to the contradiction it sees in the mishna, suggesting a dispute as to the status of a levirate widow.

A. Why do they (the Schools of Shammai and Hillel) agree about the [law in the] first part of the mishna, but disagree about the [law in the] second part of the mishna?
B. *Ulla said:* The first part deals with property she acquired [while awaiting levirate marriage] while she was betrothed, and the second part deals with property she acquired [while awaiting levirate marriage] while she was married.

C. *For Ulla is of the opinion that the levirate bond of a betrothed woman has the force of questionable betrothal, and the levirate bond of a married woman has the force of questionable marriage.*

D. *For if you thought that she was fully betrothed {that is, that the bond between the levir and the widow has the same force as betrothal}, would the School of Hillel agree that she could sell or give away property and the transaction would stand?*

E. *... for if you thought she was fully married {that is, that the bond between the levir and the widow has the same force as marriage}, would then the School of Shammai say that the heirs of the [deceased] husband divide it with the heirs of [her] father?*

F. *Rather, this teaches that the levirate bond of a betrothed woman has the force of questionable betrothal, and the levirate bond of a married woman has the force of questionable marriage.*

G. *Rabbah said to him: Before arguing about the property itself after her death, let [the Schools] argue about the usufruct in her lifetime!*

H. *Rather said Rabbah: Both [rules in the mishna] are dealing with a case in which she acquired the property while married, and the levirate bond of a married woman has the force of questionable marriage. The first [rule applies] when she is alive — her claim is absolute and his is questionable, and a questionable claim does not supersede an absolute claim. The second [rule applies] when she is dead, and these [the heirs of the father] and these [the heirs of the husband] claim to be her heirs — let them divide [the property, since each claim rests on the questionable status]. . . .*

I. *Abbaye said: The first part deals with property she acquired while awaiting the levir; the second part deals with property she acquired while married to her [now-deceased] husband.*

J. *For Abbaye is of the opinion that his hand is like her hand. {The claim of a husband on his wife’s property is equal to hers}.*
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k. Rava said to him: If she had acquired it while married, everyone agrees that his claim is greater than hers.

l. Rather: Both [rules in the mishna] are dealing with a case in which she acquired the property while awaiting the levir. The first [rule applies] when he has not made a declaration, and the second [rule applies] when he had made a declaration.

m. For Rava is of the opinion that for the School of Shammai, declaration has the force of absolute betrothal and questionable marriage—absolute betrothal, in that it eliminates [the possibility of levirate marriage with] her co-wife, and questionable marriage, in that it allows him to share in her property [even if she dies before the marriage takes place].

The Bavli offers four amoraic interpretations of the mishna, each proposing a resolution of the problem caused by the apparent contradiction. Ulla’s interpretation [B–F] posits that the force of ziqqa, the bond between the levir and his sister-in-law, is determined by her relationship to the deceased: if they were betrothed when he died, she is in a state of “uncertain” betrothal, but if they were already married, the relationship between her and the levir is one of “questionable marriage.” A betrothal that is not clearly established affords the “husband” (in this case, the levir) no rights over the woman’s property; a doubtful marriage does give him some claim over her property if she dies, leading the mishna to recommend a division of the property between the claimants.

This understanding of ziqqa is problematic. Regardless of the circumstances that existed between a man and his wife before his death, the procedure for affirming or dissolving a levirate bond is the same: declaration followed by levirate marriage or halitza. How can we distinguish between levels of ziqqa if the protocol for responding is identical?

Rabbah’s reading of the mishna [H] resolves this problem by explaining that, in both cases, the woman acquired property while married to her now-deceased husband. Simply put, the levirate bond creates an “incomplete” union between a levir and a yevama. A yevama enjoys control over her property because it is clearly hers (even a married woman’s property is legally hers, although her right to control it is limited by her husband); the levir’s claim is not strong enough to override her control.

In death, the woman’s claim is transferred to her family, but the claim-
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ants are now equal; the levir’s claim is based on his “marriage,” while the woman’s family’s claim is based on the “incompleteness” of that marriage.

The third opinion, that of Abbaye [I–J], also requires us to read the mishna as a hybrid. The first case deals with a woman who acquires property while a shomeret yavam; given her complete control over the property, Abbaye clearly does not impute much legal force to ziqqa beyond prohibiting the yevama to marry outside her husband’s family. If, however, the property comes to the woman while she is married to her husband, his power over the property is equal to hers, and that power is inherited by the levir to the extent that he can claim her property as her heir.

For Rava [L], the factor that determines the validity of a levir’s claim on the property of the yevama is a declaration of intent to perform levirate marriage. If he has not made a declaration, he has no rights. The declaration has, at least according to the School of Shammai [M], the force of betrothal and then some, giving the levir a significant claim to the property of the yevama if she dies before he marries her. For Rava, like Abbaye, ziqqa alone has little force, but together with a declaration it has more force than betrothal, on which ziqqa is modeled.

Two of the solutions offered in this sugya, those of Ulla and Abbaye, require particularly forced readings of the mishna, readings that demand we imagine that the rulings reflect different moments on the timeline of a woman’s life. All four readings focus on the way in which a bond is created between a levir and his sister-in-law and the force of that bond. What is clear is that the amoraim could not agree about the precise nature and force of ziqqa or ma’amor, nor could they precisely define the status of a yevama vis-à-vis the levir.

As was the case in the Yerushalmi, none of these solutions fully address the language of the mishna. In discussing the legitimacy or force of the levir’s claim to his “wife’s” estate, the Bavli ignores the words “the heirs of the husband.” If we follow the arguments of the amoraim, the mishna should read “the levir” or “the husband.” The mishna’s language suggests that the levirate widow is still tied to her late husband, that his claim on her is somehow transferred to his heirs, including the levir.

The Mishnah acknowledges that the levirate widow is a hybrid, a woman whose connection to the “man in her life,” that is, the levir, is
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unclear. Faced with this uncertainty, the law treats the yevama in an unusual manner. The laws in Mishnah Yevamot 4:3 allow the yevama considerable power over her property. This power may reflect the possibility that there are several men eligible to become her husband; if her husband left several brothers, it is impossible to assign control of her property to any one of them. The compromises set forth in the second part of the mishna may reflect the situation on the ground. On one hand, the woman’s family of origin has a strong claim, since she died unmarried. On the other hand, the marriage settlement is in the possession of the husband’s family, and they may also have physical possession of the yevama’s movable property. Since the owner of the property is dead, the Mishnah’s authors may have thought division of the property among the claimants was an elegant solution.

Another topic that allows the rabbis to explore the status of a levirate widow is the annulment of vows. A married woman’s vows may be annulled by her husband, but the vows of a widow are not subject to the approval of any man. Mishnah Nedarim 10:6 discusses the power of a levir to annul the vows of his sister-in-law. The Mishnah and subsequent talmudic discussions underscore the difficulty the sages faced in clarifying the legal status of a levirate widow and her relationship to her husband’s brothers.

A woman who is awaiting [the decision] of a levir [to perform levirate marriage or submit to halitza], whether there is one levir or two—Rabbi Eliezer says: [The levir] may annul [her vows]. Rabbi Joshua says: [This is the case if there is] one levir, but not if there are two. Rabbi Akiba says: [This is not the case] whether there is one or there are two. Rabbi Eliezer said: If a man can annul the vows of a woman whom he acquires on his own, isn’t it logical that he can annul the vows of one acquired for him by divine intervention? Rabbi Akiba said to him: No. The case of a woman whom he acquires on his own, in whom no other has rights, cannot be used to learn about the case of a woman who is acquired for him by divine intervention, in whom others [that is, other brothers of the deceased] have rights. Rabbi Joshua said to him: Akiba, what you say applies when there are two levirs, for in such a case there are others who have rights, but what would you say when there is only
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one levir? He said to him: The yevama is not bound to the levir in the way a betrothed woman is bound to her betrothed.

Earlier in the tenth chapter of Mishnah Nedarim, we learn that the vows of a betrothed woman who has not reached majority can be annulled only if her father and her betrothed act together; if they disagree, her vows stand. Moreover, should her father die while she is betrothed, her vows cannot be annulled by her betrothed alone. If a woman reaches her majority while still in her father’s house, neither her father nor her betrothed can annul her vows.

The dispute among the sages cited in Mishnah Nedarim 10:6 is characterized by the latter part of the mishna and by the Bavli as a dispute about the relationship created between the yevama and the levir in the wake of the death of the woman’s husband:

A. It is reasonable to say that R. Akiba does not view ziqqa as having legal force equivalent to marriage, and R. Joshua does view ziqqa as having legal force equivalent to marriage.

B. But as for R. Eliezer, what is his reason [for empowering a levir to annul the vows of the yevama]? If ziqqa has legal force, still there is no determination [in a case where there is more than one levir, as to which levir will be her husband].

C. R. Ammi says: [R. Eliezer’s view makes sense] in a case in which one of the brothers has made a declaration of intent.

D. And R. Eliezer shares the view of the School of Shammai, which says that declaration has the force of betrothal.

E. And R. Joshua would say to you that this is only the case when there is one levir, but with two it is not the case. Since a second brother could, through sexual intercourse or a bill of divorce, render the yevama forbidden [to the brother who made the declaration], why should the first brother be able to annul her vows?

F. And R. Akiba believes that ziqqa has no legal force.

G. And for R. Eleazar, who says that the School of Shammai claims that declaration only has the legal force to release the co-wife [of the yevama to whom the declaration was made], how can we explain [R. Eliezer’s claim that the levir can annul the vows of the yevama]?
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We are dealing with a case when the levir has gone to court and been required to support the yevama. And this follows the opinion of R. Pinhas in the name of Rava, who says: When a woman makes vows, she does so with the knowledge of her husband [who supports her]. [A levir may annul the vows of the yevama only when he is supporting her like a husband.] 83

This sugya, like the ones that discuss the property of a levirate widow, attempts to determine the status of the yevama in relation to the levir. The question, according to the Bavli, is whether ziqqa, the bond created between the levir and the yevama by the death of her husband, has the force of marriage. If the levir is technically his sister-in-law’s husband, despite having yet to enter into a formal union, he should be able to annul her vows; if they are not legally married, he would not be able to annul the vows. Rabbi Ammi suggests that a declaration of the levir’s intent to marry his yevama would have the force of betrothal.

Another factor that complicates the discussion is the fact that in some situations there may be more than one brother available to perform levirate marriage. While the Bavli does not discuss the possibility here, there might also be multiple widows available for the levirate union. Even if a bond is created between one levir and his sister-in-law when they are the only people affected by the levirate bond, the existence of multiple partners raises the question: How can a bond exist between a man and a woman if she is simultaneously “bound” to his brothers?

The Bavli contains other sugyot that attempt to define the force of ziqqa. What emerges from all of these discussions is that the status of the levirate widow is unique. The Talmuds, like the Mishnah and Tosefta, are unable to resolve the contradictions in the yevama’s status. Only through levirate marriage or halitza can the yevama be restored to the clear-cut status of wife or freed to be a halutzia, a woman whose status is similar to that of a divorcée.

Taming the Shrew: Power and the Levirate Widow

As we saw earlier, the bond created between a levir and his sister-in-law by the death of her husband leaves the yevama with little or no control over her immediate future. Levirate marriage can be formalized by sexual intercourse alone, and that intercourse does not require the consent
of the woman. The levirate widow is at the mercy of her husband’s brothers, who can decide to marry her or release her at any point after her husband’s death.84

What is striking in reading Mishnah Yevamot is that the power that a levirate widow does have is subversive. She does not have the power of other widows, the power to choose a husband. Instead, the Mishnah imagines the yevama exercising power in unusual ways, making a vow not to benefit from her brother-in-law or claiming that her brother-in-law has failed to consummate their union. The halitza ritual highlights the unusual ability of the levirate widow; in a ritual that is necessitated by the levir’s decision not to perform levirate marriage, the yevama removes her brother-in-law’s shoe, spits at him, and denounces him. Each of the acts that comprise halitza is, on some level, embarrassing for the levir; the yevama becomes the instrument of his humiliation. In all three instances—vow, claim, or halitza—the yevama is a vocal witness to her brother-in-law’s inadequacy or lack of family feeling. Her voice—whether declaring her brother-in-law’s abandonment of his responsibilities or complaining that he has not consummated their union—is the voice of protest against her brother-in-law’s decision regarding levirate.

One can imagine that the voice of the yevama as described in the Mishnah was problematic for the rabbis. We can surmise that the Tosefta’s insistence that the yevama’s consent was required for the declaration that initiates levirate marriage represents the sages’ attempt to introduce a more acceptable way for the yevama to indicate her interest or lack thereof in a levirate union. The Bavli’s response indicates another approach to the out-of-control yevama (or, rather, the yevama in control). Faced with a woman who attempts to exercise the role assigned her by the law or to use the law to her own end, the sages assert their role in resolving levirate bonds. The sages’ response to certain situations represents their insistence that they, not individual women, are the guardians of the law.85

The Mishnah describes the woman as the active party in the halitza ritual. That description is built on Deuteronomy 25 and is not challenged by the rabbis. The degree to which the sages assign the woman the active role in halitza, while restricting the levir to the passive role, is illustrated in an aggadic passage at Bavli Yevamot 102b:
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A certain sectarian said to Rabban Gamaliel, [Israel is] a people whose master has cast it from himself (halatz lei minei), as it is written, “With their sheep and their cattle they go to seek Adonai, and they do not find; [God] has cast them off” (Hosea 5:6). He replied: Fool! Does it say, “Cast them off” (halatz lahem). It says “cast off by them” (halatz meihem). If the brothers perform halitza upon the levirate widow, does it have any significance?

The sectarian taunts Rabban Gamaliel, claiming Hosea 5:6 to be proof that God has rejected Israel. God, says the sectarian, can be compared to a levir who, through the ritual of halitza, “casts off” his sister-in-law. Gamaliel retorts that it is Israel who has rejected God, and such rejection can be compared to a levir casting off his yevama through halitza. This comparison makes the rejection meaningless; just as the ritual of halitza is invalid when performed by the man, so too the covenant between God and Israel cannot be destroyed by Israel.

What makes this aggada remarkable is its reversal of gender roles. When the relationship between God and Israel is described as a marriage, God is always the husband. God “marries” Israel and can divorce her if He so chooses. Here, however, God is the wife (or levirate widow), because it is the levirate widow who has the power to “cast off” the levir through halitza, not the other way around. This aggada acknowledges the power of the yevama; the levir may wish to end their relationship through halitza, but he cannot enact the ritual; only she can do that.86

The Bavli does insist that the levir play some role in the halitza ritual. Most important, he must be questioned to determine his preference for levirate marriage or halitza. But rather than expand the role of the levir at the expense of the yevama, the Bavli focuses on expanding the role of the court, that is, the role of sages, in the process. By making themselves the judges, counselors, and arbiters of halitza, the sages balance or diminish the power of the yevama to orchestrate the procedure. This desire to control halitza may explain why there are so many references in the Bavli, particularly in the twelfth chapter, to individual rabbis supervising halitza ceremonies.87

The Bavli portrays rabbis as advocates of both men and women in the process of resolving levirate bonds. Discussing the exchange that
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precedes the ritual of *halitza*, the Bavli describes the “advice” given to a levir deciding whether to choose levirate or *halitza*:

“They summon [the levir]” (Deut. 25:8) — they and not their representative — “and they speak to him” — giving advice that is appropriate to [his situation]. If he is young and [the levirate widow] is old, or if he is old and [the levirate widow] is young, they say to him, “What business have you with this young woman?” or “What business have you with this old woman? Go find a wife suitable for yourself and do not bring trouble into your house.”

This advice is directed at the levir and couched in terms of his happiness. At the same time, the same factors that might make a marriage “unsuitable” for the levir might make it less than desirable for the *yevama* as well. The language of the Bavli suggests that the sages see no benefit in forcing a young woman into marriage with a much older man.

The Yerushalmi is even more explicit in its willingness to discourage levirate marriage in certain situations:

A. If he is old, they say to her, “What do you need with an old man?”
B. If she is old, they say to him, “What do you need with an old woman?”
C. If she is young and he is old, they say to him, “She is young and will disdain you.”
D. If he is young and she is old, they say to her, “He is young and will disdain you.”
E. If he wants [to marry her] but she does not want [to marry him], we listen to her.
F. If she wants [to marry him] and he does not want [to marry her], we listen to him.
G. The general principle is that we listen to the one who objects [to the marriage].
H. If they both want [to marry despite the age difference] — a case came before R. Yose, and he said, “Even [though you are in agreement], put her away! [Despite the willingness of the yevama to marry the levir, R. Yose urged the levir to submit to halitza.]”

Rabbi Yose sees a significant age difference as an impediment to marriage, even when the couple does not. His exhortation may also reflect
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the Palestinian preference for *halitza*. At the very least, Yose regards *halitza* and levirate as equally appropriate responses to the levirate bond.

What is interesting is the Yerushalmi’s portrayal of the possible negotiations between the court and the couple. According to the Mishnah, the choice to enter into levirate marriage or submit to *halitza* is the levir’s, and the advice proffered is “advice that is appropriate for him.” The Yerushalmi, however, addresses both the levir and the *yevama*, directing its counsel at the older person in all cases. Is this simply a matter of style, or are we to imagine that the *yevama* had as strong a voice in the decision as the levir? Were the wishes of the levirate widow enough to cause a court to “listen to her” and pressure the levir to submit to *halitza*? If so, should we read this section as an expression of rabbinic concern for women, a subtle preference on the part of Palestinian rabbis for *halitza*, or an assertion of the role that sages should play in people’s marital choices? What is clear is that the rabbis’ advice offers a structured, rabbinically controlled way for a levirate widow to voice her preferences and to be heard. If anything, the Yerushalmi argues that neither the levir nor the *yevama* is the proper person to decide whether levirate marriage or *halitza* is preferable; that decision is best left to a dispassionate judge, the court.

The Bavli and the Yerushalmi also describe instances in which rabbis tricked men into agreeing to *halitza*, even though the men were inclined to perform levirate marriage. Moreover, these tricks are presented not as reflecting the rabbis’ dislike for levirate marriage, but as ploys to assist women who preferred not to marry their brothers-in-law. Women have no legal right to refuse a levirate union; here rabbis support the women’s decisions and exercise their power on behalf of powerless women:

A. *Our rabbis taught:* Halitza performed under a false premise is valid.

B. *What is “halitza performed under a false premise?”*

C. *Resh Lajish said:* Any case in which they say to him, “Perform halitza and you may marry her.” [In such a case, despite the fact that the levir is now forbidden to marry the widow, the halitza is valid.]

D. *R. Yohanan said to him:* I have learned, “Whether he intended [to perform halitza] and she did not, or she intended [to perform

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halitza and he did not, halitza is invalid until both intend [to perform halitza]." Yet you say the halitza is valid!
E. Rather, any case in which they say to him, "Perform halitza and she will give you two hundred zuz." [In such a case, even if she doesn’t give him the money, the halitza is valid.]
F. There was a case of a woman who found herself with an unsuitable levir. They said to him, "Perform halitza and she will give you two hundred zuz." The case came before R. Hiyya and he validated [the halitza].
G. A man came before R. Hiyya bar Abba [regarding levirate marriage].
H. [R. Hiyya bar Abba] said to [the widow], "My daughter, stand up."
I. Her mother said to him, "Her sitting is her standing up."
J. He said to her, "Do you know something about him [that pertains to this matter]?
K. She said to him, "Yes, he sees the money [presumably his brother’s estate and/or her property] and wants to consume it."
L. He said to her, "Is the matter not acceptable to you?"
M. She said to him, "No."
N. [R. Hiyya bar Abba] said to [the levir], "Perform halitza with her and in doing so you may marry her."
O. After he performed halitza, [R. Hiyya bar Abba] said to him, "Now she is unfit for you; perform a proper halitza so she can marry anyone else."
P. The daughter of R. Pappa’s father-in-law found herself before an unsuitable levir.
Q. He came before Abbaye. He said to him, "Perform halitza with her and through doing so you may marry her."
R. R. Pappa said to [Abbaye], "Does the master not accept the teaching of R. Yohanan [at D]?
S. [Abbaye responded], "Then what should I say to him?"
T. He said to him, "Perform halitza and she will give you two hundred zuz."
U. After he performed halitza, [Abbaye] said to [the widow], "Go give him [the money]."
V. [R. Pappa] said to [Abbaye], "This is a case of ‘I was only jesting’ [and she has no legal obligation to pay him]."
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w. For is it not taught: One who is fleeing from prison and reaches a ford, may say to the ferryman, “I'll pay you a dinar to take me across,” and give him only the [usual] fee. Therefore, he can say to him, “I was only jesting [so you would help me save myself].” Here too, [she can claim], “I was only jesting [to save myself from levirate marriage].”

In these three cases, women are faced with levirs whom they should not or do not wish to marry. In the first and third cases [F and P−U], we are told that the levir “is unsuitable” for his sister-in-law. On the basis of the Bavli’s discussion at Yevamot 101b, we might assume a significant age difference between the levir and the yevama. Nonetheless, the levir apparently wishes to marry his sister-in-law. In these cases, the yevama does not express her wishes; we cannot be certain if the women found these marriages distasteful and the rabbis in question agreed, or if the women may have been willing to marry their brothers-in-law but the rabbis disapproved of such “unsuitable” unions.

The second case [G−O] is the most detailed and involves an exchange between Rabbi Hiyya bar Abba and the mother of the yevama. The rabbi asks the widow to stand up, presumably to enter into the levirate union. Her mother’s reply, “Her sitting is her standing,” suggests that the woman’s reluctance to enter the union (her “sitting”) is the preferable course of action, the one that will best protect her (her “standing”). Questioning the woman, the rabbi learns that the levir is eager to marry his sister-in-law to get his hands on her property, and she is not interested in marrying him. Rabbi Hiyya proceeds to trick the levir into halitza.

The third case includes a justification for refusing to carry out the conditions on which the halitza was agreed to by the levir. Rav Pappa compares a woman who promises to pay her levir if he releases her to a person fleeing from prison. A promise to pay an inflated fee to escape one’s pursuers can be ignored after the fact; so too, a woman can claim her offer to pay her levir was a “jest,” an exaggeration intended to effect her release from him. The comparison suggests that an undesirable marriage is a type of imprisonment, justifying the woman’s desire to avoid levirate marriage and the rabbis’ willingness to assist her.

The same issues are discussed in Yerushalmi Yevamot 12:6 (13a). Here a woman’s unwillingness to marry her levir is presented as a justification
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for a rabbi’s decision to trick the levir into halitza, but the Yerushalmi seems more hesitant than the Bavli to engage in such trickery:

A. What is “halitza performed under a false premise?”
B. Said Simeon ben Laqish: Whenever they say to him, “Release her and she will be permitted to you later.”
C. Said R. Yohanan: Last night I was sitting and learning: “Whether he intended [to perform halitza] and she did not, or she intended [to perform halitza] and he did not, halitza is invalid until both intend [to perform halitza].”
D. What is “halitza performed under a false premise?”
E. According to R. Yohanan: Whenever they say to him, “Release her and she will give you one hundred maneh.”
F. R. Mana said: If he says, “[I am releasing her] on the condition [that she gives me the money],” she must give him the money.
G. A case came before R. Huna and he followed R. Simeon ben Laqish. When R. Yohanan heard, he disagreed; the other retracted and made [the levir] do halitza a second time.
H. A case came before R. Hiyya bar Ba and he said to him, “My son, this woman does not want to marry you through levirate marriage.” [R. Hiyya led the levir to believe that if he submitted to halitza, he could marry his sister-in-law afterward.] After he did halitza, he said to him, “If Moses and Samuel were to come, they would not permit her [to you].”

i. [Concerning Hiyya, the levir] recited the verse, “They are skilled at doing evil, but they do not know how to do good” (Jer. 4:22).

The Yerushalmi includes the same dispute between Resh Laqish and Rabbi Yohanan as to the proper way to deceive a levir whose sister-in-law does not want to marry him. In contrast to the Bavli, which assumes that the court is tricking the levir into halitza, the Yerushalmi considers two possibilities: the court may mention a payment as part of its trickery or the levir may suggest it himself as a condition of his agreeing to halitza. In the latter case, the money should be paid. The Bavli compares a woman to a person in flight, but the Yerushalmi treats her like a person who has entered into a contract with the levir and should be required to comply with the agreements she makes.

Both the Bavli and the Yerushalmi relate a case in which Rabbi Hiyya
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bar Abba helped a woman avoid levirate marriage. While the Bavli offers an elaborate exchange between Rabbi Hiyya and the yevama (and/or her mother), the Yerushalmi includes no such dialogue; we do not know how Rabbi Hiyya knew that the yevama did not want to marry her levir, nor is there any mention of the levir’s unscrupulous motives for levirate marriage. The Yerushalmi’s discussion ends with the levir’s critique of Rabbi Hiyya, perhaps suggesting that the rabbi’s decision to champion the yevama by deceiving the levir was not wise.

In both the Bavli and the Yerushalmi, we find cases in which a sage assisted a woman who did not want to marry her levir. The assistance was provided despite the levir’s desire for levirate marriage and required trickery on the part of the sage. While the Yerushalmi hints at discomfort with these methods, the Bavli does not. The Bavli, however, feels the need to justify the trickery by informing the reader that in each case the levir was not a suitable partner for his sister-in-law.

While showing a willingness to help women avoid levirate marriage, the Bavli is uncomfortable with levirate widows who try to avoid levirate marriage through vows:

A woman who vows to derive no benefit from her husband’s brother—[if she makes the vow] in her husband’s lifetime, they force [the levir] to perform halitza. [If she makes the vow] after her husband’s death, they ask him to perform halitza. But if she intended this [that is, to avoid levirate marriage through the vow], even if [she made the vow] in her husband’s lifetime, they ask him to perform halitza.94

A. It was taught there [in M. Ned. 11:12]: At first they said: Three [types of] women are divorced and collect their marriage settlements—The one who says, “I am forbidden to you” [The wife of a priest claims she has been raped and therefore cannot remain married.] [Or the one who says,] “God is [the witness] between you and me.” [There is no witness to her improper behavior, but she assures him it has occurred.] [Or the one who says,] “I am unavailable to Jews.” [She has taken a vow that she will not have intercourse with any Jewish man.]

B. They retracted and said: Perhaps a woman will set her sights on another man and seek to ruin her marriage. Rather, let the one

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who says, “I am forbidden to you” bring proof. [As for the one who says,] “God is [the witness] between you and me” let them attempt to mediate. [As for the one who says,] “I am unavailable to Jews,” let [the husband] annul the part of the vow that applies to him and she can have intercourse with him and be forbidden to all other Jews.

c. It was asked of them: “I am unavailable to Jews” how does this impact a levir? Did it or did it not occur to her that [her husband] might die without children and she would fall before the levir?

The Bavli acknowledges the need to limit a woman’s ability to escape her marriage by making a claim that would lead a court to insist that her husband give her a divorce. If a woman attempts to obtain a divorce by making a vow, the husband may annul the part of the vow that applies to him, leaving her sexually forbidden to all (male) Jews except him.

The Bavli now asks, “What if this woman’s husband dies without children?” Can her levir marry her and annul the part of the vow that applies to him, or, because he is not yet her husband and therefore unable to annul her vows, must he release her? The Bavli’s concern is her intention. In particular, the Bavli is uncomfortable with the possibility that the yevama, like the women discussed in Mishnah Nedarim, made the vow to escape marriage. The sugya concludes that the levir cannot annul the vow and must release his sister-in-law, but it also insists that we assume the yevama’s vow not to derive benefit from her brother-in-law was made without any thought of avoiding levirate marriage. If she specifies that the vow was intended to avoid levirate marriage, the court does not pressure the levir but merely “asks” him to do halitza.

The Bavli is willing to “force” the levir to submit to halitza only because the yevama is not pressuring the levir (or the rabbis) through her vow. Here, the Bavli neutralizes the power of the yevama by denying that she is trying to exercise power. In an ironic twist, a woman who understands what is at stake can ensure that her vow will be honored by using language that suggests she does not understand what is at stake. Faced with a sick, childless husband, an intelligent woman can vow not to benefit from her brother-in-law and, as long as she omits any mention of levirate, expect a court to support her if she finds herself bound to
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her levir after her husband's death. The Bavli preserves the power of the sages to determine when a woman can be released, but a clever woman can exercise power on her own behalf.96

The talmudic passages in this section acknowledge that women may have wished to avoid levirate marriage and may have sought the assistance of the rabbis or tried to prevent the marriage through vows made before or after the death of their husbands.97 This concern is expressed elsewhere in the Bavli, together with the concern that a woman might in fact be desirous of such a marriage. In both cases, the Bavli considers the possibility that a woman's feelings toward her brother-in-law might lead her to act hastily upon receiving a report that her husband has died:

A. They asked R. Sheshet: What is [the standing of] one witness regarding a yevama? [If one witness testifies that a woman's childless husband has dies, is this testimony adequate to allow a levirate marriage?]

B. Is the reason [for accepting the testimony of] one witness [to permit a woman to remarry] that since the matter will be revealed a person wouldn't lie, [in which case] here too he wouldn't lie, or is the reason [for accepting] one witness that [the widow] will investigate before marrying, but here, since in some cases she loves her brother-in-law, she won't investigate before marrying. . . .

C. There is one who says: This is not what you should be asking. . . . What you should be asking about is the standing of one witness [when the testimony would] permit a yevama to marry anyone. [This would involve testimony that the levir has died.]

D. Is the reason [for accepting the testimony of] one witness [to permit a woman to remarry] that since the matter will be revealed a person wouldn't lie, [in which case] here too he wouldn't lie, or is the reason [for accepting] one witness that [the widow] will investigate before marrying, but here she won't investigate before marrying because she hates [the levir].98

The Bavli suggests that the prior relationship between the yevama and her brother-in-law may influence her response to news that her husband has died. The levir is a known quantity to his sister-in-law, and she may have strong feelings toward him. Whether those feelings are
negative or positive, they might lead her to act thoughtlessly or in a calculating way.

This discussion, together with the ones mentioned earlier, offers some insight into the rabbis’ thoughts about a woman’s inclinations regarding levirate marriage. Despite its assumption that a woman would rather be married than single, the Bavli acknowledges that a *yevama* might not want to marry her brother-in-law if he was unsuitable by virtue of his age or for some other reason. A woman might be reluctant to marry a levir whose primary motivation for marriage was money. A woman would, if possible, avoid marrying a man she already disliked.

The Hebrew Bible, which portrays women as eager to marry their deceased husbands’ kin, may have seen levirate as a childless widow’s best option. Rabbinic literature, on the other hand, acknowledges, sometimes explicitly, sometimes implicitly, that widows have options other than levirate.

**The Levirate Widow and the Family**

The widow of a childless man finds herself in a no-man’s-land with regard to family. Upon marriage, a woman leaves her parents’ home and enters the home of her husband. While she maintains connections to her family of origin, retaining her inheritance rights and enjoying the right to visit her parents’ home, she becomes part of her husband’s family, with the legal restrictions and rights that come with marriage. Some of these rights and obligations end with the death of her husband, and while she can in theory return to her parents’ home, such a return might be problematic; her parents might be dead, and even if her father is living, the position of an “emancipated daughter” in the parental home could be awkward. Her presence in the household of her late husband might also be problematic; her husband’s family may view her as a drain on the resources of the family or a reminder of their son’s death and childlessness.

The Hebrew Bible hints at the involvement of a childless man’s parents in determining the fate of his widow. It is Judah, not his sons, who first promotes and then delays Tamar’s marriage to her husband’s brother. It is Naomi who arranges for Ruth to marry into the extended family of her deceased husband. Rabbinic sources offer little information about parental involvement in the decision to submit to *halitza* or enter into a
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levirate union. According to Mishnah Yevamot 4:7, a father would inherit his childless son’s property in the event that one of his sons submitted to halitza. If one of the surviving brothers chose to enter into levirate marriage, there is a dispute as to who inherits the property, with the prevailing view assigning the property to that brother. This gives the deceased’s father a possible reason for encouraging his sons to opt for halitza over levirate. At the same time, if the wife had brought property into the marriage, levirate would allow her husband’s family to retain that property and remove the need to pay her marriage settlement; thus it is possible that levirate might preserve the deceased’s estate for his heirs—his father or brother—while halitza would deplete it.

Does the yevama’s family of origin have any interest in the decision? A family might prefer that their daughter remarry quickly, in which case levirate would be preferable to halitza. If the marriage created ties between the husband and wife’s families that were valued by the wife’s family, they might encourage levirate to preserve the connection; the same would be true of the husband’s family. If the woman’s family saw no benefit in a continued alliance between the families, or if they did not think highly of their son-in-law’s brother, they might prefer that he submit to halitza. Like the yevama herself, the woman’s family had no power to force the levir’s choice. They might, however, have some economic influence. Mishnah Ketubot 6:2 discusses the dowry assigned by a father to his daughter and reports:

*If [the bride’s father] agreed to give his son-in-law a certain sum of money and his son-in-law died [before the money was delivered], the sages say: He can say [to the levir]: “I wanted to give this to your brother; I do not want to give it to you.”*

While the Mishnah does not specify when this exchange between the woman’s father and brother-in-law occurs, Rashi locates it between the husband’s death and the levir’s decision. The decision, although entirely up to the levir, may be influenced by the father’s declaration; this may be a ploy on the father’s part to encourage the levir to choose halitza. It is worth noting that in the case brought before Rabbi Hyya bar Abba (B. Yev. 106a), the yevama is accompanied by her mother, who initiates the conversation and conveys to the rabbi that her daughter has no desire to marry the levir.

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It seems likely that at least in some circumstances, a man or woman’s family might have an interest in promoting halitza or levirate. Parents were involved in arranging their children’s marriages; they presumably retained an interest in the marriage and in the arrival of children. Parents might have influenced their son’s decision to marry his brother’s widow or to refrain from doing so. The Mishnah acknowledges that some of the parties affected by a levirate bond would have been minors. It considers the case of two minors, a yevama and her young brother-in-law, who have intercourse, and rules that “they shall grow up together.” The minor boy’s intercourse is effective, but he is too young to give a woman a divorce; the couple must wait until they reach adulthood before the young man can release his sister-in-law. However, the words “they shall grow up together” suggest that the couple could be raised in the same household, perhaps in preparation for affirming the levirate union when they reach adulthood. This case, together with the next case, which imagines an adult yevama “raising” her minor brother-in-law who has had intercourse with her, leaves open the possibility that the yevama will remain in her in-laws’ home, even in their care. Such an arrangement suggests parental approval of the levirate union. Similarly, when a minor yevama who was betrothed by her mother or brothers chooses to “refuse” her levir, it seems likely that her family encouraged her to do so.

To the extent that a particular yevama had any voice in the outcome of the levirate bond, her ties to her husband’s family might influence her preference. The Mishnah acknowledges that relations between a wife and her husband’s female relatives can be assumed to be strained. We learn in Mishnah Yevamot 15:4 that a woman’s mother-in-law, sisters-in-law (her husband’s sister and the wife of her husband’s brother), co-wife, and stepdaughter cannot testify to her husband’s death, freeing her to remarry. The same women are permitted to deliver the wife’s bill of divorce and may testify that she has committed adultery to exempt her from the sotah ritual. The commentaries on these three mishnayot all assume that a wife is disliked by her husband’s female relations and that they would not hesitate to give misinformation—or information that has not been properly checked—since they do not care if her status is damaged. Tensions between a woman and the wife of her husband’s brother may reflect concern that they might end up as co-wives; the other rela-
tionships are presumably strained because of jealousy or a sense on the part of these women that the wife has displaced them. The Mishnah’s assumption need not have been true in all families, but surely the family dynamic would contribute to a widow’s desire to remain part of her husband’s family or leave it, just as it might influence the levir’s decision regarding levirate or halitza.

The Levirate Widow and the Deceased

We have seen that some women were reluctant to marry their brothers-in-law. The Mishnah and Tosefta and the Talmuds acknowledge this reluctance, describing scenarios in which women used vows or claims of nonconsummation to avoid or escape levirate marriage. Furthermore, these texts portray rabbis and courts as willing partners in promoting women’s preferences, even if it involved deceiving the levir.

What motivated women to avoid levirate unions? Mishnah Ketubot 7:10 empowers a court to compel a man to divorce his wife if he has a physical condition or occupation that she finds disgusting. The Mishnah concludes with a story about a woman who was unwilling to marry her levir and apparently cited as her reason his work as a tanner. The sages ruled that her refusal was legitimate, because she had the right to say, “For your brother, I was able to accept [the stench], but for you I am not able.”104 This case suggests that a woman may bear some discomfort for a man she finds attractive or compatible and that a woman may simply find some men unattractive or incompatible. Women may resist levirate marriage if they found their brothers-in-law unattractive or believed their motives for levirate were financial. A woman with property and/or a sizable marriage settlement may believe she will be able to secure a better husband than her levir, or she may have no wish to remarry. As the Bavli acknowledges, a married woman has the opportunity to interact with her brother-in-law; when he presents himself to her as a potential husband, she may already have a strong like or dislike for him.

What, in turn, might have motivated a woman to desire marriage to her brother-in-law? Again, the Bavli acknowledges the role of emotion; a woman may already be emotionally attracted or attached to her brother-in-law. The Bavli also suggests that a woman might wish to marry in order to have a child. Bavli Ketubot 64a imagines a situation in which the yevama wants to marry while the levir does not. It acknowledges that
women may want children to support them when they are old and to arrange for their burial. A husband and children represent security for a woman; perhaps some widows viewed levirate as insurance against a life without a home and family.

There is no suggestion in tractate Yevamot that a woman would consider entering a levirate union out of a sense of obligation to her dead husband. There are several indications that husbands were willing to assist their wives in avoiding the possibility of levirate after their death:

_A woman who vows to derive no benefit from her husband’s brother— [if she makes the vow] in her husband’s lifetime, they force him to perform halitza. [If she makes the vow] after her husband’s death, they ask him to perform halitza. But if she intended this [that is, to avoid levirate marriage through the vow], even if [she made the vow] in her husband’s lifetime, they ask him to perform halitza._

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The vows of a married woman could be annulled by her husband. If a woman made a vow not to benefit from her brother-in-law, and her husband allowed the vow to stand, it is possible that he was knowingly helping her to avoid a possible levirate marriage. Bavli Ketubot 2b describes a man giving his wife a conditional divorce before leaving on a journey. Here, too, one motivation for the conditional divorce might be the husband’s desire to protect his wife from levirate marriage or from the need to wait for his brother to release her.

**Conclusions**

Rabbinic texts focus on the status of the _yevama_ from the time of her husband’s death until her marriage to her brother-in-law or her release through _halitza_. The levirate widow is no longer under the control of her husband. She is “assigned” to the levir from the moment of her husband’s death but is not yet, and may never be, under his control. Thus the levirate widow is an anomaly, a woman who is neither wholly dependent on or independent of a male relative.

The rabbis are uncomfortable with this anomaly. They are also uncomfortable with the anomaly that is levirate marriage—a quasi-betrothal created not by the levir’s actions but by his brother’s death and a marriage “formalized” by sexual intercourse and without a woman’s
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consent. Their attempts to resolve this anomaly by “normalizing” levirate marriage have an impact on the status of the levirate widow. She becomes less a vehicle to provide her husband with posthumous heirs and more a person entitled to make a decision about her future. Another way the rabbis respond to the anomaly is to assert their own authority, wresting control away from both the levir (by requiring ma’amar and pressuring him to submit to halitza) and the yevama (by offering their own solutions in situations in which she might exercise unseemly power).

The relationship explored in these texts is that of the yevama and the levir. There is little mention of the role of his or her family and their interest in promoting either levirate or halitza. Nor do the rabbis consider the relationship of the yevama to her deceased husband. While the death of her husband has left her with a legal tie to his brother, there is no indication that the yevama has or feels an obligation to provide the deceased with an heir. Just as the levir is accorded the right to choose levirate or halitza, the yevama is entitled to have a preference, even though she has less power to act on her wishes than the levir. In fact, the texts suggest rabbis’ willingness to assist the yevama in realizing her choice. The claim of the deceased on his wife is minimized, allowing the rabbis to contemplate her preferences just as they consider those of her brother-in-law. Once again, concern for the living supersedes concern for the dead.
The stated goal of levirate in ancient Israel, according to Deuteronomy 25, was the creation of a posthumous heir for a childless man. Levirate was mandated when a man “dies and leaves no son”; presumably when a man was survived by sons, his widow was not restricted to a union with her husband’s late brother but could marry whomever she chose. A man’s refusal to enter into a levirate union with his brother’s widow was seen as a refusal “to establish a name in Israel for his brother” or “to build up his brother’s house,” that is, a refusal to provide his brother with a son.

The birth of a child to the deceased’s widow is the high point of the two biblical narratives that focus on the renewal of a family broken by the death of a childless man. While Genesis 38 can be read as a turning point in the Joseph story, insofar as it marks the moment when a member of Jacob’s family recognizes his responsibility to the family, the chapter culminates in the birth of twin sons to Tamar and Judah, children who replace Er and Onan. The tragedy that occurs in the opening verses of the Book of Ruth, the death of Naomi’s husband and two sons, is softened in the book’s closing scene, when Ruth bears a son who is hailed as Naomi’s “redeemer,” the child who “will renew [her] life and sustain [her] old age,” that is, a child who will fulfill the role once assigned to her sons. These narratives, together with Deuteronomy 25:5–10, suggest that in ancient Israel a levirate union had fulfilled its function when it produced a child. The union presumably continued and other children...
might be born to the couple, but it was the oldest child whose birth resolved the problem caused by the death of a childless man, the preservation of that man’s name or house among the people Israel.

In contrast to these narratives, rabbinic discussions of levirate focus on the resolution of the levirate bond between the widow of the deceased and his brother. For the rabbis, the culmination of the levirate situation is either a levirate marriage or halitza, the ritual that dissolves the levirate obligation, freeing the woman to marry outside her husband’s family. The rabbis’ interest in levirate ends at that moment, the moment when the woman becomes the wife of her husband’s brother or a halitza, a woman who has been released. There is no interest in the birth of a child to a levir and his former sister-in-law, unless that child might be the child of the deceased, rendering levirate or halitza retroactively unnecessary or unlawful. The focus of levirate has shifted, it seems, from the child to the levir and the widow, from responding to the claims and needs of the dead to determining the choices of the living.

This chapter explores the status of children born to levirate unions. It considers the assignment of the paternity of these children and their rights to the estate of their mother’s first husband. It also considers their relationship to the deceased, and to their biological father, the levir, as well as their place in their extended patrilineal family, the family of both the deceased and the levir. Finally, it asks why the child of the levirate union, the focus of the biblical precept of levirate, is of so little interest to the rabbis, and what, if any, alternative vehicles for ensuring an individual’s name and legacy were preferred in rabbinic tradition.

While many cultures assign the paternity of the children born of a levirate union to the deceased, rabbinic law assigns the paternity of these children to the levir. In doing so, rabbinic law privileges the levir over the child of levirate, bestowing the estate of the deceased on the levir. It also negates the primary reason for levirate as stated in Deuteronomy, ensuring that even a successful levirate union, one that produces children, will not provide the deceased with issue or preserve his name. This chapter argues that in modifying levirate marriage and rejecting other strategies of continuity that could be employed on behalf of a childless man, the rabbis indicate that their understanding of continuity and legacy differs from that of their Israelite ancestors and neighboring cultures. Family and the continuation of the family are still valued, but are
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no longer allowed to justify heroic measures, nor can they be mandated at the expense of another man, even one’s brother.

Childlessness as the Catalyst of and Justification for Levirate

Deuteronomy 25 mandates levirate when “a man dies and leaves no ben.” The Hebrew word ben can indicate either the gender-specific “son” or the nonspecific “child.” A man’s name and property were most likely to be preserved by a son, but the Hebrew Bible contains insufficient information to determine whether levirate was mandated when a man left a daughter. Numbers 27 and 36 permit a daughter to serve as her father’s heir in the absence of sons, describing the preservation of a man’s property within his line of descent and, through the marriage of the daughter within her father’s patrilineage, his extended clan. This suggests that levirate would not be mandated when a man was survived only by daughters. This is the view of both Philo and Josephus.²

The early rabbis mandated levirate only when a man left no descendants whatsoever. A surviving son or daughter, even a grandson or granddaughter, obviated the need for levirate.³ Any child freed the widow from the levirate obligation, provided that the child was legally assigned to the father; even a mamzer exempted his father’s wife from the levirate bond.⁴ A child born to a slave or Gentile fell outside this category, because the father could not legally claim paternity, so the widow would be bound by the levirate obligation.⁵ If the deceased left a child or grandchild, or his widow was found to be pregnant after his death and the child was viable at birth, not only was levirate unnecessary, it was forbidden.⁶ For the rabbis, levirate was, as Deuteronomy 25 indicates, an institution rooted in the need to provide an heir for the deceased; if the deceased had issue, there was no need for levirate. In such a case, the relationship between a widow and her brother-in-law remained incestuous even after the death of her husband.

While levirate may have been intended first and foremost to provide a child for the deceased, the rabbis permit levirate in cases where it is unlikely that the union will produce children. One mishna states, “A eunuch does not do halitza nor does he enter into a levirate union. So too, a sterile woman does not do halitza nor does she enter into a levirate union.”⁷ The Tosefta and the Bavli affirm the Mishnah’s ruling that
no levirate bond is created between the deceased’s brother and his wife when the latter is sterile. The Tosefta offers a more nuanced ruling regarding eunuchs; someone who has been a eunuch from birth has no levirate obligation, but a man who was castrated should perform levirate or release his sister-in-law through halitza. Similarly, a second mishna suggests that a distinction should be made between men who were born eunuchs and those who were castrated. The former have no levirate obligations, nor is a eunuch’s widow subject to levirate; since the deceased could never have fulfilled the obligation to procreate, his brother is not required to do so on his behalf. A man who was castrated is subject to levirate obligations that he can fulfill only through halitza; as a castrated man he cannot legally marry and therefore cannot initiate a levirate union. The widow and brother of a man who had been castrated are subject to levirate; because the deceased was at one time in his life fit to have children, his brother is obligated to provide children for him.

These sources indicate that a man’s childlessness is the catalyst that generates the levirate bond between his widow and brother upon his death. Furthermore, because the purpose of a levirate union is to produce a child (rather than to protect the widow or assign her to another member of the patrilineage that paid her bride-price), levirate is not mandated in cases where there is no possibility whatsoever of procreation. If procreation is theoretically possible, although unlikely, the levir may choose to marry his sister-in-law. An older man or woman may enter into a levirate union; rabbinic advice to a man to forgo such a union is couched in terms of age disparity, not because of the improbability of the union producing children. These discussions and rulings demonstrate that the rabbis still recognized that the possibility of producing a child was the justification for levirate marriage. A levirate union that definitely could not produce a child was viewed as incestuous.

Assignment of Paternity in Levirate

If the justification for levirate is the desire or need to provide a deceased man with a posthumous heir, levirate is completely successful only when it produces a child. Furthermore, the children of the levirate union, or at least one of them, should be recognized as the heir of the deceased. This would involve assigning paternity away from the social father, the levir, to the deceased. It would also bestow the property of the deceased on
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the child or children of the levirate union, rather than award it to the father or the brothers of the deceased, as is usually the case when a man dies without children. The child would be raised by his mother—and, in some societies, by the levir—as the son of her deceased husband.

In fact, one of the characteristics that define a relationship as levirate is the assignment of the children of the union to their mother’s deceased husband. In some cultures, levirate is a vehicle used to provide an heir for a man who died without children; in these cultures, assigning the child of levirate to the deceased fulfills the purpose of the union. In other cultures, levirate is a response to the belief that a woman remains the legal wife of her husband even after his death; that is, any children she bears are the legal offspring of the deceased. In some cases, a widow cannot remarry, nor can she return to her family of origin. Levirate in many cases is optional, and the widow may be able to choose the levir from among her husband’s kinsmen. In all of these cultures, the children of the levirate union are treated as the children of the woman’s dead husband, not the children of their biological father. This is true whether the widow and the levir live together or separately, and whether the levirate union is long term or temporary.

Biblical references to levirate create some confusion as to the assignment of paternity of the children of levirate unions in ancient Israel. The language of Deuteronomy 25 indicates that the children—or at least the first child—of a levirate union were to be assigned to the lineage of the deceased rather than to that of their biological father. That the deceased and not the levir was the legal pater of the child of a levirate union is also supported by Onan’s reluctance to impregnate Tamar; Onan spills seed because he knows “that the seed would not count as his.” At the same time, the Hebrew Bible names a child of a levirate or levirate-like union as the son of his biological father; Tamar’s sons are listed in genealogies as Judah’s sons, and Obed is referred to as the son of Boaz, not of Mahlon.

All rabbinic discussions of levirate recognize that levirate is mandated only when the deceased left no issue. Furthermore, levirate is mandated only when there is some possibility that the union could produce children; sterile women and eunuchs may not contract levirate marriage. This indicates that the goal of the union is the creation of a child who will carry on the name or line of the deceased. However, all of
these discussions insist that the children of a levirate union are the legal issue not of the deceased but of the levir.

The Mishnah never directly asserts that the child of a levirate union is assigned to the levir. However, the concerns the Mishnah voices about uncertain paternity indicate the need to know whether the child the yevama carries is that of her late husband or of the levir:

*If a man releases his sister-in-law through halitza and she is [subsequently] found to be pregnant and she gives birth — if the child is viable, [the levir] is permitted [to marry] her relatives and she is permitted [to marry] his relatives and she is not rendered unfit for [marriage to a man who traces his lineage to] the priesthood. If the child is not viable, [the levir] is forbidden [to marry] her relatives and she is forbidden [to marry] his relatives and she is rendered unfit for [marriage to a man who traces his lineage to] the priesthood.*

*If he marries his sister-in-law [in a levirate union] and she is found to be pregnant and she gives birth — if the child is viable, he divorces her and they are liable [to bring] a sin-offering. If the child is not viable, he may remain married.*

*If it is uncertain whether the child is a full-term child of the former [i.e. the deceased] or the premature child of the latter [i.e. the levir], he divorces her; the child is legitimate and they are liable [to bring] a guilt offering.*

In the first case, the yevama realizes she is pregnant, presumably by her late husband, only after halitza has occurred. The birth of a viable child retroactively negates the halitza, and the relationship between the levir and the yevama reverts to a normal brother-in-law and sister-in-law relationship; they are forbidden to each other but can marry each other’s relatives. If a woman discovers she is pregnant after contracting a levirate union and that pregnancy is assumed to be the result of intercourse with her first husband, the union must be dissolved upon the birth of a viable child. The birth of the child renders the levirate union retroactively unnecessary and illicit. Finally, if the paternity of the child is uncertain, presumably because the levirate union took place close to the husband’s death and the pregnancy become evident soon after, the levirate union is dissolved and the couple
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must make a guilt offering, signaling that they may have had an incestuous relationship. In the first two cases, the child is recognized as the child of the deceased. In the third case, the child is legitimate, but his or her paternity remains uncertain; analysis of talmudic sugyot indicates that this uncertainty will have a significant impact on the child's claims to family property.

If paternity of the child of a levirate union was assigned to the deceased, the assertion that “the child [who may be the child of the deceased or of the levir] is legitimate” would be unnecessary. The child’s paternity—and legitimacy—would be determined by his being born to the widow of the deceased. Whether the child had been fathered by her husband before his death, or afterward by the levir, the child would be recognized as the child and heir of the deceased. It might still be the case that the levirate union had been unnecessary, but there would be no need to protect the child from the stain of illegitimacy. Nor would the complications surrounding inheritance arise, since the child would be the heir of the deceased regardless of who sired him. It is only because the Mishnah assumes that the child of a levirate union is the legal offspring of the levir that such a clarification is necessary. This assumption distinguishes rabbinic constructs of levirate from those found in other societies.

The assignment of paternity to the levir rather than the deceased determines the child’s inheritance rights with respect to the estate of his mother’s first husband. As the children of the deceased’s brother, the offspring of a levirate union have no precedence in inheriting the deceased’s estate. The strongest claims, given that the deceased has no recognized issue, would be those of his father and brothers.

Under rabbinic law, a man who marries the widow of his childless brother becomes the sole heir to the estate of the deceased. The widow is granted no portion of the estate; she does not even collect her marriage settlement upon the death of her first husband, because she is not released to remarry. After the levirate union, her original marriage settlement remains a lien on the estate of the deceased, and she is not entitled to a second settlement from the levir. The deceased’s other brothers have no claim on any part of the estate; they are displaced by the levir. While in other cultures that practice levirate the children of a levirate union are accounted to the deceased, that is not the case in
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rabbinic law. Instead, the children are the legal offspring and thus the heirs of the levir. The children of the levirate union have no claim on the estate of their mother’s first husband, save for their mother’s marriage settlement should she predecease her husband. Upon the levir’s death, his entire estate—including the portion he inherited through levirate marriage—devolves on all of his surviving children. Should he leave children by both his brother’s widow and another wife, all of his sons would inherit shares of the estate with no distinction made between the sons of the yevama and those of another woman. This division of property follows logically from the rabbis’ decision to assign paternity of the children of levirate to the levir.

Through this assignment, the rabbis acknowledge that the child of a levirate union can in no way be said to preserve the name or the estate of the dead. Rather than perpetuating a system in which the child displaces his biological father, the levir, the rabbis imagine one in which the levir displaces the child he will father; the levir takes his brother’s place, claiming both the wife and the property of the deceased. This displacement or replacement is spelled out at Bavli Yevamot 24a. Commenting on the mishna, “It is the duty of the oldest [surviving brother] to enter into a levirate union, but if a younger [brother] preempts [his older brother], he acquires [the widow as his wife],” and analyzing the language of Deuteronomy 25, the Bavli considers the focus on the oldest surviving brother.

A. Our rabbis taught: “The first son”—from this [we learn] that it is the duty of the oldest [brother] to perform levirate marriage. “That she bears”—this excludes a sterile woman who cannot give birth. “Shall be accounted to the dead brother”—in the matter of inheritance. [Basing itself on the literal reading of ahiv as “his brother,” the midrash indicates that the levir who marries his sister-in-law should “take his brother’s place,” that is, inherit his brother’s estate.]

B. You claim it refers to inheritance, but perhaps it refers to the name. [If the deceased was named] Joseph, they name [the firstborn of the levirate union] Joseph. [If the deceased was named] Johanan, they name [the firstborn of the levirate union] Johanan.
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C. Here [in Deuteronomy] it says, “shall be accounted to the dead brother,” and there [Gen. 48:6] it says, “They shall be recorded under the name of their brothers in their inheritance.” Just as “name” there refers to inheritance, so too here “name” refers to inheritance. . . .

D. Rava said: Even though throughout the Torah [we teach that] no verse ever loses its contextual meaning, here the result of applying the exegetical principle of gezera shava is that the contextual meaning is entirely lost!

E. If there was no gezera shava, would I say that “name” actually means [that the child bears the deceased’s] name? Who is the Torah addressing? If it is the levir, it should read, “shall be accounted to your brother.” If it is the court, it should read, “shall be accounted to his father’s brother.” Perhaps the Torah is saying to the court: Say to the levir, “[The child born to you] shall be accounted to his [that is, the levir’s] brother.” Rather, the result of applying the exegetical principle of gezera shava is that the contextual meaning is entirely lost.18

A straightforward reading of Deuteronomy 25:6 assigns a special status to the oldest son of the levirate union, the child that the levirate widow bears to her brother-in-law; he “shall be accounted to the dead brother.” One would expect that this child would serve as the deceased’s heir and would be viewed as the son of the deceased rather than of the levir. The Bavli, however, chooses to read “the firstborn son” as a reference not to the child of the levirate union but to the oldest brother of the deceased. This allows the Bavli to bestow the estate of the deceased on the brother who performs levirate. This sugya severs any connection between the child of levirate and the deceased. The child is not named after the deceased, nor does he inherit the deceased’s property. It is the levir who has “taken his brother’s place.”

The rabbis’ decision to assign the child of a levirate union to the biological father rather than the deceased has significant consequences. Establishment of paternity confers rights and responsibilities on fathers and children. A man is obligated to educate his son and perform certain rituals on his behalf.19 The marriage contract includes the husband’s responsibility to provide for his daughters.20 A man’s sons are recognized
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as his primary heirs. Being acknowledged as the levir’s sons allows the children of the levirate union, together with any sons the levir has by other marriages, to inherit his estate. It also obligates the levir to provide for the children, in contrast to societies in which assigning paternity to the deceased frees the levir of any financial responsibility for the children born to his widowed sister-in-law.

The three males connected through a traditional levirate union—the deceased, his living brother, and the desired son—are linked by shared patrilineage. It is the desire to preserve the deceased’s place in the patrilineage that leads to a levirate union, and it is the bond between men in the same patrilineage that compels the levir to take his brother’s widow and father a child on her. The relationship between the child and his two “fathers,” the deceased and the levir, is a confused one. On one hand, the child shares their patrilineage, regardless of whose son he is legally. On the other hand, if he is to serve as the heir of the deceased, he cannot be recognized as the son of his biological father. Instead, the child of a levirate union would displace his biological father, inheriting the property of the deceased and carrying on his name. If the child of the levirate union is treated as the son of his biological father, the levir, he cannot truly “replace” the deceased or inherit his estate. The rabbis chose the latter course, securing a living father for the children of levirate while alienating them from the deceased.

Rabbinic texts consider the legal status of children born in a levirate union. This material offers us no indication of how individuals and families involved in levirate unions experienced those unions and understood the roles they assumed as a result of responding to the levirate obligation. Does the rabbinic dictum that, when a man enters into a levirate union with his widowed sister-in-law, “she is like his wife in every way” reflect concern that the levirate marriage might not be experienced by the parties as a normal union, or might it reflect a sense that the levir and the yevama adjusted to their shift in roles and experienced their marriage as unremarkable? Were children born to a levirate marriage viewed by their parents and their extended family in a special way, and was their “connection” to the deceased mentioned? These questions cannot be answered on the basis of the sources available to us, but recognizing the levir as the children’s pater offered them the legal support and protection provided by a father.
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You Are My Son: The Dangers of Uncertainty Regarding Paternity

The Mishnah requires that a levirate widow wait three months after the death of her husband before marrying her brother-in-law. This waiting period is intended to ascertain whether the widow is pregnant. If she is pregnant, an additional waiting period is required to determine if the child is viable; if so, there is no need for levirate marriage or halitza. At the beginning of the fourth chapter of Yevamot, the Mishnah considers cases in which the widow and her brother-in-law act before realizing that she is pregnant. The final rule of Mishnah Yevamot 4:2 explores a situation in which it is unclear whose child the woman is carrying, that of her late husband or that of her brother-in-law:

If it is uncertain whether the child is a full-term child of the former (the deceased) or the premature child of the latter (the levir), he divorces her; the child is legitimate and they are liable [to bring] a guilt offering.

The Mishnah assumes that in such a case the levir and the widow will separate, on the chance that their union is unnecessary—in fact illicit—because the child is the product of her first marriage. While the union must be dissolved and the couple is required to make a guilt offering lest they committed unintentional incest, the child is legitimate. The child may be the product of his mother’s marriage to the deceased or the result of a levirate union that was, in fact, permissible if his mother was not pregnant when her husband died. In either case, he is not illegitimate.

The Bavli imagines the situations that might arise years later, when the child, whose paternity was never determined, claims a share of the property belonging to his mother’s deceased husband, the levir, or their father, his paternal grandfather. His claims put him at odds with the levir and the levir’s sons, individuals who may be his father and brothers or his uncle and cousins. This discussion underscores the rabbinic assumption that a child born of a levirate union is recognized as the child not of the deceased but of the levir. It also highlights the tensions that could arise within a family if a child of levirate were treated as the deceased’s heir, possibly explaining why the rabbis rejected such a construct.
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A. A child whose status is uncertain and a levir come to divide the property of the deceased (that is, the deceased husband of the child’s mother, the levir’s brother). The child whose status is uncertain says: I am the child of the deceased, and the property is mine. The levir says: You are my son, and you have no claim at all to the property. The [appropriate disposition of the] money is uncertain, and in such a case, they divide [the property equally].

B. A child whose status is uncertain and the sons of the levir come to divide the property of the deceased. The child whose status is uncertain says: I am the child of the deceased, and the property is mine. The sons of the levir say: You are our brother, and you have only a portion together with us.

C. The sages before R. Mesharshia thought to say: [This case is comparable to] our Mishnah, which teaches, “[A child who is born within three months of the death of his mother’s previous husband and her marriage to her subsequent husband] cannot inherit from [sons born to her from either husband], but they can inherit from him.

D. Here it is the opposite. There [in the Mishnah], they say to him, “Bring proof [that you are indeed the son of our father] and take [a portion of his estate].” Here, he says to them, “Bring proof [that I am not the son of the deceased] and take [a portion].” [In the first case, he must prove that he shares a father with a certain group of brothers. In the latter case, his claim to the deceased’s estate is certain; he is either the deceased’s son and should inherit everything, or he is the son of the levir and should inherit part of the deceased’s estate through his connection to the levir. The levir’s sons have an uncertain claim, for if the child of uncertain status is the child of the deceased, they, as the deceased’s nephews, have no standing.]

E. R. Mesharshia said to them: Are the two cases comparable? There [in the Mishnah], their claim is certain and his is uncertain. Here, both claims are uncertain [since both depend on ascertaining the paternity of the one claimant].

F. Rather, if our case is comparable to a mishnaic ruling, it is to this ruling: To a child of uncertain status and the sons of the levir who come to divide the property of the levir himself, for there
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they say to him, “Bring proof that you are our brother and take [a portion].”

g. A child whose status is uncertain and sons of the levir come to divide the property of the levir after he divided up the property of the deceased. The sons of the levir say: Bring proof that you are our brother and take [your share of our father’s property]. The child whose status is uncertain says: What do you prefer? If [you claim that] I am your brother, give me a portion among you. If [you claim that] I am the son of the deceased, give me the half portion that your father took from me.

h. R. Abba said Rav said: The judgment stands. [The child of uncertain status had presumably challenged the levir’s claim to the property. Whatever division was made in response to that challenge stands; it cannot be reopened now that the levir has died.]

i. R. Jeremiah said: The judgment can be reviewed. . . . [The sons of the levir must recognize him as their brother and give him a son’s portion of the estate, or acknowledge him as the son of the deceased and give him the entirety of that estate, even the portion their father had been awarded.]

j. A child whose status is uncertain and a levir come to divide the property of the grandfather [the father of the levir]. The child whose status is uncertain says: I am the child of the deceased [brother of the levir], and half the property is mine. [This assumes that the deceased and the levir were their father’s only sons.] The levir says: You are my son, and you have no claim to the property. The levir has a certain claim and the child whose status is uncertain has an uncertain claim — an uncertain claim has no standing when there is a certain claim.

k. A child whose status is uncertain and sons of the levir come to divide the property of the grandfather. The child whose status is uncertain says: I am the son of the deceased and half the property is mine [as my father’s only son]. The sons of the levir say: You are our brother, and you have only a portion together with us. They take the half that he concedes is theirs, and he takes the third that they concede is his. A sixth of the property is left and the [appropriate disposition of the] money is uncertain, and in such a case, they divide [the property equally].25
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The child of uncertain status under discussion here is born within nine months of the death of his mother’s first husband and within seven months of her union with the levir; he could in theory be the child of either the deceased or the levir. In each of these cases, the Bavli imagines the child—now an adult—insisting that he is the child of his mother’s first husband and demanding a significant portion of the family inheritance. The other claimants—the levir or the sons of the levir—insist that the child has no claim, or at best a lesser claim, on the estate in question.26

The Yerushalmi posits similar situations. The language of the Yerushalmi is more pointed, acknowledging explicitly the clash between the interests of the levir and his acknowledged sons, on one hand, and the child of doubtful status, on the other.

A. If the child whose status is uncertain comes to collect his father’s share, they say to him, “That one [the levir] is your father.” If the levir comes to collect his brother’s share, they say to him, “That one [the child] is his son.” What do they do? They compromise and divide the deceased’s estate. They say that a compromise among brothers is a loss to brothers, whereas strife between brothers is a gain to brothers.

B. . . . If the mother of the child whose status is uncertain dies, the son’s claim is certain and the husband’s claim is doubtful.

C. . . . If the levir died, and the child whose status is uncertain comes to collect his father’s share, if the first [to die, that is, the deceased husband] was poor, they say to him, “That one was your father.” If he was rich, they say to him, “We are all brothers, the sons of brothers. Come let us inherit the share of our father and the share of our father’s brother.”27

The Yerushalmi leaves no doubt that the primary concern of the parties is monetary. The levir and the child of doubtful status are at odds over the estate of the former’s deceased brother. The levir’s claim of paternity is not an embrace of his “son,” but a claim of entitlement to the estate of the deceased. The latter’s claim to be the deceased’s sole son and heir is not an assertion of filial devotion, but a claim to be the sole inheritor of the deceased’s property. Moreover, “peace” or compromise between the levir and the child disadvantages the levir’s acknowledged...
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sons by reducing the estate of the father from whom they will eventually inherit. It is therefore to their advantage to encourage the lawsuit between their father and this child, proclaiming him their “brother” to promote their own financial interests. Similarly, the last case discussed in the Yerushalmi imagines a show of fraternal solidarity only when that display allows the levir’s acknowledged sons to claim a larger estate; if the levir’s brother was poor, they are happy to acknowledge him as the child’s father, denying that the child is their brother. The Yerushalmi also imagines a child disowning his “father,” the levir, in order to assert his claim to the estate of his mother; by denying the levir and claiming the deceased as his father, the child asserts that his mother’s marriage to the levir was invalid. Both the Bavli and the Yerushalmi indicate that money trumps family ties.

These cases leave the reader to imagine a family living for years with the uncertainty caused by the decision of the levir and the levirate widow to enter into a union within a month or two of the death of the woman’s husband. The child of the union, born less than nine months after the levirate marriage, grows up uncertain as to his relationship to the levir. The marriage between the levir and the child’s mother, according to the Mishnah, must be dissolved. The child would grow up either without a father or, if his mother remarried, with a stepfather on whom he has no legal claim of kinship. His place within his patrilineal family is unclear. Although the child is legitimate, he is officially fatherless. The levir may be his biological father or his uncle; the levir’s sons by another wife may be his siblings or his cousins. At the same time, he is clearly the grandson of his paternal grandfather and the nephew of his paternal uncles, except for the levir, since both of his possible fathers were their brothers.

The Bavli acknowledges that in some situations family ties may be strained when an inheritance is at stake. The Mishnah mandates separation of the levir and the levirate widow when paternity cannot be determined. In theory, this would leave the levirate widow alone with her child. She could remarry, in which case the child might be raised by a stepfather. The child is legitimate and has connections to and claims on the patrilineage of the deceased and the levir. But the Bavli suggests that his precise role in his father’s family is never established. If he comes as a claimant to an estate, his paternal relatives see him as a threat to their inheritance.
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We might imagine a levir, believing the yevama’s child is his, taking an interest in that child, even if he is forbidden to maintain the child’s mother as his wife. The Bavli, however, imagines the levir claiming the child as his son, not out of paternal pride or love, but to eliminate the child’s claim to an inheritance. “You are my son,” proclaims the levir, “and you have no claim to the property” that belonged to my brother or father.

Similarly, the Bavli constructs a scenario in which the child finds himself in a legal dispute with the acknowledged sons of the levir. The levir, we must assume, is dead, since his sons are presenting themselves as claimants to the estate of the deceased brother or their grandfather; such claims would not be legitimate if the levir were alive. The child may never have been acknowledged by the levir. Now, the levir’s sons insist that the child in question is their brother — something they may never have acknowledged before — in order to reduce his claim on the estate. Such protestations of brotherhood can hardly be welcome to the child, whose claim to be the only son of his mother’s first husband would entitle him to all or half of the estate being distributed.

In all of these cases, the disputants are members of the same patrilineage. The child whose paternity is in doubt is certainly the son, nephew, brother, or cousin of the other claimants. However, their interactions with him are far from fraternal.

Both the Bavli and the Yerushalmi construct scenarios that imagine that the child born to the yevama shortly after the death of her husband is a son. It is worth noting that if the child whose paternity was uncertain was a girl, her status would be even more precarious. If she was recognized as the child of her mother’s first husband, she would be her father’s sole heir and be entitled to his share of his father’s estate. If, however, she was treated as the child of the levir, she would have no rights to her father’s estate in the event that the levir had sons from another marriage. Instead of saying, “You are our brother, and you have only a portion together with us,” the sons of the levir would be able to say, “You are our sister and you are entitled to nothing more than maintenance from our father’s estate.”

These scenarios may help to explain the rabbis’ insistence that the child of a levirate union be recognized as the child of the levir. It is easy to imagine that had paternity of the children of a levirate union been
assigned to the deceased, the levir would have found himself raising children whom he regarded as usurpers of his rights to his brother’s estate. Those children would not enjoy the legal protection afforded by a father. If the deceased had left a large estate, a guardian—perhaps the children’s mother—could see to their economic needs. If the estate was small, they would be dependent on the goodwill of the levir and his sense of obligation to his brother. Studies suggest that a levir’s goodwill can be hoped for but not guaranteed, even in societies in which a great deal of emphasis is placed on the extended family. Shifting paternity from the deceased to the levir may have been attractive, in part, because it offered women and their children in a male-dominated society the protection and support provided by a husband and father. Once again, the good of the living is allowed to supersede the benefit to the deceased of assigning paternity of the children of levirate to him.

Levirate and Alternative Strategies of Continuity

Levirate is what Jack Goody calls a strategy of continuity, a vehicle that maximizes a man’s ability to leave (male) descendants who can inherit his property and preserve his name and lineage. Goody also uses the term “strategy of heirship,” particularly in terms of response to the “problem” that arises when a man has no sons to inherit his property. In such a situation, levirate is one of a number of vehicles that a society may offer to individuals to help them resolve their problem.

The Hebrew Bible portrays childlessness, or more accurately the lack of male children, as a personal tragedy for women. Rachel, Hannah, and the Shunamite who hosts the prophet Elisha all experience their barrenness as painful. For men, the problem is not only personal but economic. Abraham, promised a great reward by God, responds to his childlessness by asking, “God, what can You give me, seeing that I shall die childless. . . . Since You have granted me no offspring, my steward will be my heir.” Abraham sees no point in amassing wealth if he has no one to leave it to but a servant to whom he has no kinship ties. The Hebrew Bible assumes a system featuring lineal or vertical rather than lateral inheritance; while the estate of a childless man will devolve on his brothers, the preferred heir is a son. Strategies of heirship in such a society will focus on obtaining a son or a son substitute.

I have asserted that the rabbis’ formulation of levirate essentially
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renders it useless as a strategy of continuity. Since the rabbis assign the paternity of the children of levirate to the levir, the deceased remains childless. The levir’s inheritance of his brother’s property would be an acceptable solution in a society that privileged lateral inheritance, but it is clearly a less than ideal solution in one that prefers lineal transmission of property.

I now wish to explore the rabbis’ thinking about heirship more broadly. Having eliminated levirate as an avenue by which a childless man could obtain an heir, do the rabbis offer alternative strategies of continuity? Is individual continuity a value promoted by the rabbis and, if so, what vehicles do they offer to support men seeking offspring or legally recognized heirs? Other cultures in the ancient Mediterranean and Near East employed strategies of continuity that could, in theory, have been adopted (and adapted) by the rabbis. The degree to which the rabbis rejected these strategies and considered others may offer some insight into their understanding of the family, specifically the desire of the family to reproduce and maintain itself and the value of the preservation of individual lineages and families to the broader community of Israel.

Goody suggests that one avenue open to a man seeking to maximize his likelihood of obtaining an heir is “adding wives.” There are three ways to add wives: polygyny, concubinage, or divorce of a barren wife followed by remarriage to a potentially fertile woman. Rabbinic sources in fact suggest marriage to a second wife or divorce of a barren wife after ten years of marriage; the latter is recommended with the assumption that the husband will find a new wife who might bear children. As Goody notes, these strategies have drawbacks. Some families are reluctant to place their daughters into a situation involving multiple wives. Dissolving a marriage may have serious financial consequences for a man in the event that a dowry must be returned. While rabbinic texts allow for polygyny, they also recognize the tensions it may place on family relationships. The rabbis were aware that payment of a woman’s marriage settlement could make divorce an unattractive option for men. Finally, some rabbinic stories acknowledge that a husband may be reluctant to end a childless marriage owing to the affection he has for his wife. So while adding wives is a logical mechanism for obtaining an heir, it may not always be a practical one.
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A second strategy involves “adding children.”35 Levirate is such a strategy, employed after a man’s death. A related strategy, ghost marriage, may be employed when the deceased had not yet married; a kinsman takes a wife on his dead relative’s behalf.

Another method of adding children involves substituting a daughter for a son, even in societies where the preferred heir is male. A daughter can be allowed to inherit outright, or she can serve as a conduit for passing her father’s property on to her sons. The latter practice, known as epiclerate, was practiced in ancient Athens.36 While an epikleros could marry any man, it was usually preferable that she marry within her father’s extended family. In Sasanian Babylonia, a daughter could serve as her father’s designated successor (stūr) in the absence of a son.37

The rabbis had biblical precedence for inheritance by daughters. In allowing daughters to inherit in the absence of sons, the Bible expands the possibility that a man will leave a direct vertical heir. While women could not inherit together with their brothers, rabbinic inheritance law affirms the biblical order of inheritance, assigning the estate of a man who leaves no sons to his daughters. Furthermore, the rights of children to inherit from their father can be transferred to their offspring; thus a man’s grandchildren, whether male or female, the children of his son or his daughter, serve as his heirs and take precedence over his father and siblings. Again we see that inheritance and levirate are strongly connected; in the absence of a son, a daughter both inherits and exempts her mother from the levirate obligation; so, too, grandchildren inherit and exempt their grandfather’s wife from levirate.

The right of daughters to inherit obviates the need to find an heir through the practice of epiclerate. The Torah envisions inheritance by daughters as a type of epiclerate; by requiring a daughter who inherits to marry within her father’s clan, it ensures that property remains within the patrilineage. However, commentators limit this requirement of endogamy to the generation of the wilderness;38 there is no indication that rabbinic law allowing daughters to inherit also dictated their marriage choices, although such choices might have been guided by the extended family or the father himself. Under rabbinic law, a daughter who inherits does so outright; she enjoys full use of the property and transmits it upon her death to her husband or children. The undisputed interpretation of ben in Deuteronomy 25:5 as “issue” rather than “son” indicates
that while a man’s preferred heir is his son, a daughter obviates the need for levirate. A man who had daughters thus had a clear vertical heir and was not considered “childless”; however, his “name” or direct lineage would not be preserved, since his daughter’s children would be assigned to their father’s patrilineage.

Both the Greeks and the Romans employed adoption as a strategy of continuity. Adoption transferred an individual from one family to another, cutting off ties to the former family in order to create legal ties to the latter. In Greece, adoption could be arranged during a man’s lifetime or posthumously and usually involved the adoption of a close relative. In ancient Rome, adoption was resorted to frequently to obtain an heir. Adoption was preferred to divorce and remarriage, or even to remarriage after a man was widowed. Roman adoption almost always involved an adult adoptee, and often the adoptee was a member of the man’s extended family. Adoption meant the severing of the adoptee’s legal ties to his natal family and was used primarily to secure an inheritance. Although daughters could inherit from their father, the family name could not be transmitted through the female line; thus adoption was an attractive option for a man with only daughters. A man who had no sons might adopt his son-in-law or adopt a male relative, who would then marry the adoptive father’s daughter. Adoption could also be used posthumously to secure an heir who would continue the family name; in such a case a man would identify an individual, often a close relative, in his will who would be adopted after the testator’s death.

Adoption, however, is absent from rabbinic sources, at least as an institution with legal ramifications. The legal ties between parent and child could not be broken, nor could such ties be legally created between two individuals who were not assumed to be biologically related. A stepfather could assume financial responsibility for a wife’s child by a previous marriage, but the child remained the legal offspring and heir of his or her own father. A stepmother might care for her husband’s children by a previous marriage, but she remained a stepmother, not a mother. While raising an orphan in one’s home was praiseworthy and the orphan was “accounted to the guardian as if he had sired him,” this accounting was meant to be an expression of praise, not a legal right or responsibility. Adoption, then, was not recognized as a vehicle for providing a childless man with an heir; a child raised by a man but not
related to him by blood could not displace the man’s father or brothers’ claim to his estate, much less that of his daughter or granddaughter.

The rabbis’ assignment of paternity to the levir should not be read as a denial of the creation of a levirate bond between a man and his deceased brother’s widow. Nor is the rabbis’ reworking of levirate law a rejection of levirate as an institution. Levirate marriage is presented in all rabbinic documents as a legal response to the death of a childless man. There are rabbinic disputes as to whether levirate marriage or *halitza* is the preferred response to the obligation, but the ancient rabbis never issue a blanket prohibition against levirate marriage. Nor is there any indication that the reworking of levirate is a result of cultural interaction between Jews and non-Jews. Whereas the culture of Roman Palestine may have discouraged levirate marriage, Sasanian Babylonia featured many of the characteristics that support the use of levirate as a strategy of heirship. The Jews of the Roman Empire may have been less inclined to practice polygyny, a prerequisite for levirate marriage, but there are indications that polygyny was acceptable among Babylonian Jews.

There is no indication in Bavli Yevamot that an objection to polygyny influenced the choice to perform levirate marriage or *halitza*. The cultural milieu of Sasanian Babylonia featured many of the attitudes and institutions that correlate with the practice of levirate marriage. Zoroastrianism shared with Judaism many marriage practices and attitudes regarding the importance of biological heirs. Zoroastrian religious texts stress the centrality of marriage and procreation. While these texts use language that suggests a preference for monogamy, polygyny was acceptable, particularly as a resolution to childlessness.

Levirate marriage was practiced in Babylonia, and Zoroastrian law retains aspects of levirate marriage that Judaism had already abandoned by the Parthian and Sasanian periods. The *Encyclopaedia Iranica* explains:

[A] widow . . . at the death of her “authorized” husband without issue was obliged to enter into a levirate marriage in order to provide him with male offspring. . . . In Zoroastrian family law, if the authorized husband passes away without leaving male issue, his successorship devolves upon his authorized wife, that is, it would be incumbent upon his widow to institute a levirate
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marriage in order that the begotten cākāriha son might maintain his deceased father's image and name and administer his property.51

There are several important distinctions between Zoroastrian and rabbinic law regarding levirate marriage. While both have the same goal, the continuation of the direct line of the deceased husband, rabbinic law acknowledges the offspring of a levirate union as the legal offspring of their biological father. In contrast, Zoroastrian law does not regard a levirate union as a true “marriage”; the offspring of the union were legally those of the deceased, and many of the rights and responsibilities of marriage did not pertain to the levirate union.52 Whereas mishnaic law awarded the property of the deceased to the brother who accepted the responsibility of levirate marriage, Zoroastrian law expected a man’s relative to provide him with posthumous offspring without financial incentive; the property was held for the offspring of the union.53

The scope of the levirate obligation was wider in Zoroastrian law. While rabbinic law acknowledged a levirate bond between the widow(s) and brother(s) of a deceased, childless man, Zoroastrian law expected the widow of a man who died without sons to enter into a levirate union even if no agnate was available.54 Levirate marriage could be performed with a nonrelative; a fee was paid to a man who would serve as a surrogate father for a nonrelative.55 Furthermore, a man without sons could, in order to acquire an heir, arrange a levirate union for his wife during his own lifetime. In Sasanian Babylonia, “women were . . . held to belong to their nearest male relatives.”56 Although a man normally transferred guardianship of his wife upon divorce, a man could divorce his wife without relinquishing guardianship. Thus “a man without male issue could make his wife to undertake a cākāriha marriage in his own favor or to appoint her to assume a stūrlīh marriage in order to provide a deceased co-religionist with a male progeny.”57

Given the emphasis in Sasanian Babylonia on continuity through a direct male heir, one might expect the Bavli to display a strong preference for levirate over halitza. Still, we see in the Bavli a willingness to allow the levir—and occasionally the yevama—to dictate the resolution of the levirate bond. Just as the sages of the Mishnah could not ignore the laws mandating levirate marriage in Deuteronomy, the sages of Babylo-
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Nia could not ignore the teachings of the Mishnah, which insisted that *halitza* was a legitimate, socially acceptable choice. Clearly, the Bavli is comfortable with *halitza* even though it means denying the deceased an heir. This correlates with a growing concern for the feelings of the levir and the levirate widow, and an increasing willingness to ignore the claim of the dead on the living. Furthermore, despite a cultural milieu that supported levirate as a vehicle for acquiring an heir for a childless man, the rabbis of Babylonia did not recognize the child of a levirate union as the offspring or heir of his mother’s deceased husband.

Procreation and Paternity

Levirate, as imagined by the rabbis, is not a true strategy of heirship or continuity. A man who marries his childless brother’s widow is designated as his heir. Should no brother be willing or able to marry the widow, all of the deceased’s brothers divide his estate; if the deceased’s father survives him, he may inherit the property and later bequeath it to his remaining sons along with the rest of his estate. Levirate results in horizontal inheritance or in vertical ascending inheritance, not the vertical descending inheritance that it was intended to achieve. Furthermore, the assignment of the deceased’s property is not really influenced by the decisions of his brothers; in any event, whether there is a levirate marriage or *halitza*, his property will devolve on his brother(s). Even the birth of multiple children to the levir and his brother’s widow has no impact on the continuity of the deceased. Nor is this reworking of levirate accompanied by the introduction or endorsement of other strategies of heirship. This leads to the impression that continuity through direct vertical descent was not of great value to the ancient rabbis.

That impression seems problematic, given that the rabbis also present procreation as a divine commandment, a religious obligation, at least for men. Despite exhortations to “be fruitful and multiply,” the Hebrew Bible presents procreation as a personal goal, motivated by the desire of individuals to preserve their name or property. Abraham complains that unless he has a son, his property will devolve on his servant. Rachel pleads with Jacob, “Give me children or I shall die.”58 The daughters of Zelophehad seek a holding among their male kin so the name of their father “will not be lost to his clan because he has no son.”59 Levirate is designed, according to Deuteronomy 25, to prevent the loss of a child-
less man’s name by assigning him a child after his death. None of these cases suggests that a family loses an essential element when a person dies without children; the loss is associated with the childless individual.

While rabbinic texts acknowledge that individuals may want children, they treat procreation as a religious obligation, a divine commandment. Mishnah Yevamot 6:6 sets the parameters of the commandment:

A man should not neglect [the commandment of] procreation unless he [already] has children. The School of Shammai says: [A man has fulfilled his obligation when he has] two male children. The School of Hillel says: One male and one female, as it is written, “Male and female He created them” (Gen. 5:2). If he marries a woman and lives with her ten years and she does not give birth, he cannot neglect [his obligation]. If he divorces her, she may marry another man. That man may live with her for ten years. If she miscarries, he counts [ten years] from the time of the miscarriage [before he is obligated to divorce her]. Men are obligated to procreate, but not women. R. Yohanan ben Beroka says: Regarding both of them, it says, “God blessed them and said to them, ‘. . . Be fruitful and multiply’” (Gen. 1:25).

This mishna understands procreation to be a positive commandment that should be fulfilled and that can be quantified or measured. The talmudic discussion of this mishna determines that a man fulfills his obligation even if his children predecease him, provided that he is survived by grandchildren.60 The connection between the commandment of procreation and levirate is clear; if a person has fulfilled the commandment to procreate, there is no need for levirate.

For the rabbis, procreation was not so much a man’s attempt to preserve his name or lineage as it was a response to a divine commandment. The rabbis designate procreation as a religious obligation and fix parameters as to when the obligation is fulfilled. This designation makes procreation an individual concern rather than a family concern. Since the dead have no obligations and cannot fulfill commandments, there is no pressure on or reason for the surviving brother to procreate on his brother’s behalf. In fact, it is impossible to do so; procreation is not a commandment that can be fulfilled by an agent. The rabbis are able to
imagine conception—and perhaps paternity—without sexual intercourse, but they do not consider the possibility of paternity by proxy.61

The belief that the requirement to procreate ends with an individual’s death is one factor that may explain the rabbis’ comfort with assigning the paternity of levirate children to the levir. Another can be found in the rabbis’ overall construct of paternity. The determination of paternity is important to the rabbis, and the assignment of paternity has significant legal ramifications. The rabbis’ requirement that all widows, including widows subject to levirate, wait three months before remarrying is intended to ensure that a woman’s child can be clearly assigned to her late husband or her new husband.62 Uncertainty about paternity can seriously disadvantage a child, placing him in a liminal state in which he may incur the responsibilities of being someone’s son without any of the benefits.63 Questionable paternity can also impair an individual’s marriage prospects.64

In order to protect children against the stigma of illegitimacy, the rabbis presume that a woman’s husband is the father of her children.65 This presumption may inform the assignment of the children of a levirate union to the levir. Because rabbinic law treats a levirate union as marriage, it must also treat the children of that union as the legal offspring of their mother’s husband. A woman cannot be simultaneously married to two husbands. Though a childless man’s death places an obligation on his widow and brother, he does not retain rights over his widow’s reproductive function.

Rabbinic literature evinces anxiety about both paternity and reproduction, specifically the ability of men (and especially rabbis) to successfully reproduce themselves, that is, to father sons who will match them in scholarship and piety.66 This anxiety is discussed at length in the seventh chapter of Daniel Boyarin’s Carnal Israel. Without repeating Boyarin’s careful analysis of Bavli Baba Metzia 83b–85a, I want to underscore several of his arguments. Boyarin finds in the sugya strong indications that the rabbis were concerned about their ability to be certain of the paternity of their wives’ children.67 This concern is echoed in other stories in the Bavli, including one in which a man overhears his wife claiming that only one of her ten sons is actually his; the man’s anxiety is heightened by his uncertainty as to which son is legitimate.68
There is also, according to Boyarin, a strong sense in the sugya that even when a man does father sons, he cannot be sure that they will be “suitable” heirs, that is, that they will resemble their father in piety and scholarship. The alternative offered by the sugya is the production of “spiritual” heirs, children who are born through the intervention of a rabbi, or students to whom he imparts Torah. These avenues are endorsed by the story of Rabbi Eleazar ben Simeon’s determination that sixty women are permitted to have intercourse with their husbands, resulting in the birth of sixty sons who are named after him, and Rabbi Yohanan’s habit of sitting outside the mikveh so that women may gaze on him as they return home from their ritual immersions and conceive sons who will be as beautiful as he is. These children are, in some sense, the children of Rabbi Eleazar and Rabbi Yohanan. I will return to this issue in the Conclusion; for now, it is sufficient to note that the rabbis acknowledge that having biological descendants is an uncertain prospect and one that may not produce the desired results.

Conclusions

Biological paternity could not be determined with any degree of certainty until the advent of modern DNA testing. In a legal system, the assignment of paternity is an artificial construct. While paternity is often assumed to be biological as well as jural—that is, one often assumes that the legal father of a child is also that child’s biological father—paternity can also be assigned or ended by legal means. Adoption ends the parental rights of one man, presumably the biological father, and awards them to the adoptive father, who may have no blood ties to the child. In most marriage systems that practice levirate, paternity is assigned to the mother’s deceased husband, even though he is certainly not the biological father of her children. In some cases, a man may even assign his wife to another man in order to produce an heir for himself; he may also be able to “lend” his wife to another man so that the man can obtain an heir. When the arrangement is concluded, the first husband reclaims his wife, and any subsequent children born to her are legally his.

While the three-month waiting period between a man’s death and his widow’s remarriage is fixed to provide some degree of certainty as to paternity, rabbinic law determines jural rather than biological paternity, while assuming that a husband is usually the biological father of
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his wife's children. A man is the legal father of his wife's children and cannot claim paternity over children born to another man's wife. Patent

ternity cannot be reassigned through adoption; although a stepfather may raise his wife's children by an earlier marriage, they remain the leg-
gal offspring of her previous husband. A man's obligation to procreate can be fulfilled through the birth of children to any of his wives, but that obligation cannot be fulfilled through the agency of another man. The right of a man under ancient Iranian law to temporarily assign his wife to another man for the purpose of begetting an heir and his right to essentially lend his wife to another man to provide the latter with an heir are unimaginable to the rabbis. In theory, under the rabbinic pronouncement that a married woman's children were assumed to be her husband's, a childless man could look the other way while his wife committed adultery and then claim the resulting child as his own; however, such a strategy would be deeply problematic and violate the laws of adultery.

This construct of paternity makes completely understandable the rabbinic insistence that the child of a levirate union is the legal offspring of the levir. The rabbis treat levirate not as an informal union between a man and his widowed sister-in-law, but as a marriage. The levir, upon marriage, assumes all of the rights and responsibilities of a husband, including the right to claim paternity over children born of the marriage. This assignment of paternity recognizes the relationship between the yevama and her brother-in-law, not the relationship between her and her deceased husband, as the central factor in determining the status of their children. It also ensures that the children of a levirate union will receive all of the financial (and emotional) support due to children from a father. While the Bavli and the Yerushalmi imagine instances in which a child of doubtful paternity might prefer, for financial reasons, to claim the deceased rather than the levir as his father, no such assumption is made when the child is clearly the son of the levir. Levirate, as imagined by the rabbis, allows for the creation of a new partnership and a new nuclear family. While the initial bond between the levir and the yevama is generated by the death of the latter's husband, the legal bonds between them after marriage are those of a husband and wife, and their children are treated as the children of a normal marriage. Whether this is a rabbinic innovation or a validation of previous practice is impos
ible to determine definitively, given the dearth of sources and the lack of clarity in the biblical texts. In either case, the child of a levirate union has a clear legal relationship to his mother’s new husband, the levir, and none whatsoever to the deceased, beyond acknowledging him as his father’s late brother. The rabbinic construct of levirate leaves the deceased childless, while offering the levir an opportunity to father additional children on his brother’s widow and claim them as his own. The child born of a levirate union is part of a complete nuclear family; although this family arises from an obligation generated by death, it is defined legally by the bonds of the living to each other.
Conclusion

The family imagined by and legislated for in rabbinic literature is not the family portrayed in the Hebrew Bible. Some of the features of the idealized rabbinic family correspond to those suggested by the biblical text. The family described in rabbinic texts is patriarchal and patrilineal; while patrilineal and matrilineal relatives are acknowledged as kin, it is the father’s family that is named mishpaha. A woman leaves her father’s home upon marriage to live with her husband. Inheritance favors male descendants over female descendants and descent through males over descent through females. Wives do not inherit from their husbands. Polygyny is permitted. Not coincidentally, all of these characteristics are found in societies that practice levirate, and levirate is a component of biblical family law.

At the same time, the idealized rabbinic family is not the extended family but the nuclear family. At the center of the rabbinic family—and arguably of the Mishnah as a whole—is the Israelite householder (ba’al ha’bayit). Jacob Neusner imagines the householder as the “father of an extended family, including his sons and their wives and children, his servants, his slaves, the craftsmen to whom he entrusts tasks he does not choose to do.” This description suggests that the family imagined in the Mishnah is an extended family with joint residence. This family is patrilineal and patrilocal; the householder’s married daughters, along with their husbands and children, are part of other families. But while the Mishnah allows for the possibility of extended family residence,
is equally plausible to imagine the family described in the Mishnah allowing for each adult married man to be a householder rather than a resident in his father’s home. Laws dealing with married women, for instance, locate those women primarily in their husbands’ homes, not in the homes of their fathers-in-law. Mishnah Ketubot speaks of transferring a bride from her father’s house to that of her husband. 3 A married woman’s household responsibilities, as described in Mishnah Ketubot 5:5, imagine the married woman being responsible for the primary tasks of her household; though she may share those tasks with female servants, there is no indication that mothers-in-law and their daughters-in-law worked together in a single household. When considering who may slaughter the Passover offering on behalf of a married woman, the Mishnah places the woman in her husband’s home or her father’s house for a festival visit; it does not consider the possibility that a woman—and her husband—would be part of his father’s household. 4 The phrase “in her father-in-law’s house” occurs approximately ten times in the Bavli, but not at all in the Mishnah. In most of those talmudic discussions, the woman referred to is a bride, suggesting that the wedding may have been held in the home of the husband’s father or that the couple might have resided with the husband’s family in the early years of their marriage. In Bavli Yevamot 58a–b and Sotah 24b, the Bavli considers the situation of “a woman awaiting levirate whose brother-in-law has intercourse with her in the house of her father-in-law.” This could be used as evidence that the couple lived in the parental home before the husband’s death, but the Bavli’s assumption might be that a childless widow could reside with her in-laws while awaiting her brother-in-law’s decision regarding levirate.

The Mishnah considers situations in which adult sons live off the same alleyway as their father and eat Sabbath meals in his home. 5 These scenarios may reflect a modified form of patrilocal residence in which adult sons remain in close proximity to the parental home but establish independent residence. Extended family residence can strain relations between parents and adult sons, insofar as such residence requires an acceptance of the authority of the senior male over his sons and their families. 6 Rabbinic law, however, insists that a father has no legal authority over his adult sons. A father cannot claim an object found by an adult child, nor can he include his adult sons in certain ritual acts with-
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out their consent. The independence of the adult son, as acknowledged by the Mishnah and later rabbinic documents, does not support the idea that adult sons lived with their parents and submitted to the authority of their fathers. Michael Satlow argues that Palestinian discussions of marriage reflect Greco-Roman beliefs that the purpose of marriage was the creation of a household (oikos) and that it was marriage that indicated a man’s entrance into adulthood. It seems reasonable to suppose that while adult children were expected to honor their parents, providing for them in their old age, and may have had strong economic ties to family members, every adult married man was, at least in the eyes of rabbinic law, an independent householder.

It is against the backdrop of rabbinic constructs of the family that we must consider the rabbis’ reshaping of levirate. Rabbinic discussions surrounding levirate marriage reveal an attempt to mediate between the claims of the dead and the claims of the living, between the responsibilities placed on the individual by his or her family and the desires of the individual. Most formulations of levirate marriage privilege the claims of the dead over those of the living. A man’s rights over his wife continue after his death, obliging her in some cases to remain a widow (or to remain the wife of the deceased) and, through a levirate union with one of her husband’s brothers or kinsmen, to provide children for her dead husband. The deceased’s kinsmen also assume responsibility for him; one of them is expected to “take over” the widow, either through marriage or as a sexual partner, and father children on behalf of the deceased. In most cases, levirate offers the levir few or no benefits. The children born of the levirate union are legally the offspring of the deceased, not of the levir. In some cases, the widow remains on her husband’s property and provides the levir with none of the labor a woman is expected to perform for her husband. The deceased’s property is held in trust for the children of the levirate union, and the levir has no interest in it.

Small wonder that the Hebrew Bible indicates a disinclination on the part of men to enter into levirate. Onan understood that the children he fathered on Tamar would not be accounted to his lineage and was reluctant to impregnate her. Elimelech’s nameless kinsman knew that assuming responsibility for Ruth and any children she might have, as well as for the property left by Elimelech and his sons, would threaten his ability to preserve his own estate. Deuteronomy acknowledges that
it is impossible to compel a man to take his brother’s widow against his will and prescribes a ritual of release. Levirate, according to Deuteronomy, requires a man willing to serve as a surrogate for his dead brother. This man must feel a sense of duty to the deceased, or to his extended clan, that overrides his natural inclination to father only children he can claim as his and maintain only property he can pass on to his heirs. In the event that the brother does not possess that sense of duty, and the elders of the community and his sister-in-law are unable to convince him, Deuteronomy releases the levir and the widow from their obligation to the deceased. However, the ritual of release is designed to shame the levir; he has failed his brother and his house bears the shame of his refusal.

While acknowledging the possibility that a man might see levirate as a burden, the Bible insinuates that childless widows saw levirate as a beneficial institution. In Deuteronomy 25, the widow’s appearance before and declaration to the elders suggests that she desires the union. She plays a prominent role in the shaming ritual, serving as the “voice” of her deceased husband. Tamar works to reestablish her place in her husband’s family through her seduction of Judah. Naomi and Ruth plot to arrange Ruth’s marriage to a member of Elimelech’s family.

Does the Hebrew Bible imagine that women gain more through levirate than men? Certainly, the widow has less to lose. Levirate allows her to remain in her husband’s family, a family to which she may have grown accustomed and in which she may have found support and comfort. A childless widow was a vulnerable member of society, and levirate ensured a woman a home and the possibility of children. Furthermore, since the widow had no rights to her husband’s property, marriage to her brother-in-law in no way threatened the widow’s economic standing; on the contrary, it might well improve her situation. Women’s willingness to promote levirate may be seen as enthusiasm for the protection offered by that institution or simply recognition that a childless widow’s options were limited.

The disincentive on a man’s part to agree to a levirate union was met by the early rabbis with a series of emendations to the laws of levirate. These emendations took into consideration and responded to the disadvantages levirate posed to men. The rabbis transformed levirate into “normative” marriage, formalizing it with a declaration of intent
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(\textit{ma\'amar}) and requiring the same waiting period as was required for
the remarriage of all widows. Furthermore, the rabbis assigned the pa-
ternity of children born in a levirate union to the levir. The estate of the
deceased was bestowed on the levir when he married his sister-in-law.
The levir was not expected to preserve the estate of his deceased brother
for the child or children of the levirate union but could bequeath it, to-
gether with his other property, to all of his children.

These changes may have made levirate marriage a more desirable
option for a man. Ironically, however, these changes on some level de-
stroyed levirate, insofar as they undermined the purpose of levirate as
described in the Hebrew Bible. Levirate, according to the Bible, is in-
tended to provide an heir for a deceased childless man, ensuring the
preservation of his “name.” As imagined by the rabbis, levirate provides
a new husband for a widow and an additional wife and property for a
brother, but offers nothing for the deceased. His wife and property have
been appropriated by his brother while he remains without offspring.

In early rabbinic literature, we see the focus of levirate shift from
concern for the deceased to concern for the living: the widow and the
levir. This shift is underscored by the concern for determining and hon-
oring the wishes of the parties to a possible levirate union. The death of
a childless man binds his brother(s) and widow(s); levirate marriage or
\textit{halitza} releases them from those bonds. If they choose to marry, they
replace the levirate bond with their own marital bond, one that they
enter into willingly.\textsuperscript{9} The \textit{yevama} becomes her brother-in-law’s wife “in
every way.” If they choose not to marry, \textit{halitza} allows the levir and the
widow to dissolve their bond and discharge their “responsibility” to the
deceased without any penalty; the levir retains a brother’s portion of
the estate of the deceased and the widow receives her marriage settle-
ment. Moreover, whether the levir chooses levirate or \textit{halitza}, his choice
is to be guided by the sages, not by his family. Like marriage and divorce,
levirate is to be regulated by the sages.

Unlike the Bible, rabbinic texts hint at options for a childless widow
beyond levirate. The Mishnah imagines situations in which a woman
would reject her brother-in-law because of his occupation, take a vow
that made marriage between them impossible, or seek to dissolve a le-
virate union through claims of nonconsummation. Both the Bavli and
the Yerushalmi include stories of levirate widows who did not wish to
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marry their brothers-in-law. In these stories, rabbis respected the women’s wishes and tricked the levirs into halitza. Although preferring that women avoid levirate marriage through court-initiated and approved efforts rather than “uncontrolled,” self-initiated acts, rabbinic sources show no inclination to force women into levirate unions. The rabbis’ admission that a woman might be reluctant to marry her brother-in-law recognizes that women had options other than levirate or perpetual childless (and impoverished) widowhood. It also may reflect the understanding that while marriage transferred a woman from her father’s authority to her husband’s, she retained strong connections to her family of origin. Rabbinic Judaism did not imagine a woman becoming an intrinsic part of her husband’s extended family; in fact, rabbinic law acknowledges the likelihood of animosity between a married woman and her husband’s female relatives. Levirate would not have been the only option for a childless widow and may not have been a particularly attractive one.

The rabbis’ reconfiguration of levirate corresponds to their understanding of family. The primary family unit in ancient Israel was probably an extended family unit with shared residence. The family was a patrilineal group, headed by the oldest male. Adult sons farmed with their parents, and women left their family of origin upon marriage to reside with their husbands’ family. Biblical law supports this type of family, regulating sexual relations between family members who might live in close proximity and attempting to ensure that the family’s land would remain within the patrilineage. The practice of levirate complements the structure and serves the interests of the extended agrarian family. Because a man’s land is part of his patrilineal family’s estate, levirate— together with the denial of a wife’s right to inherit from her husband—helps preserve the family estate while providing a home for a childless widow. Brothers who live in close proximity to each other and to their extended family can be called on to assume responsibility for their brothers’ widows. The authority of the older generation may contribute to a man’s decision to enter into a levirate union, as illustrated by the influence of Judah and Naomi in the unions of Tamar and Ruth. There is no indication that the rabbis imagined such influence taking place in their world; they focus on the choices of the individual levir and, to a lesser extent, the yevama. What influence might be brought to bear
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on the couple was assigned to the sages, not the parents; the authority of the family is replaced by the authority of the rabbis.

A shift from extended family to nuclear family can be explained in part by social and economic factors. One factor that may have influenced this shift was urbanization. The extended family that characterized early Israel was, according to scholars, a family whose survival depended on farming in an unfriendly environment. Settlements were small, comprising extended family groups, and the labor and cooperation of the entire family were essential. Urbanization leads to changes in residence patterns, possibly contributing to a diminution of the power of the senior male in the extended family; adult sons who live apart from their father are less likely to be subject to his authority. Urbanization and the rise of tenant farmers and small agricultural units also promote smaller family groups and diminish the need for family members to farm together. Although a nuclear family may maintain strong ties to the larger family unit, the primary family unit now consists of a married couple and their unmarried children. Rabbinic law, while acknowledging broader ties in its discussions of inheritance, incest, and testimony, focuses on the householder and his immediate family; this may in part reflect the economic and social reality of the rabbinic period.

Shifts in concerns surrounding inheritance may have contributed to shifts in levirate. Deuteronomy 25 legislates levirate “when brothers dwell together,” suggesting that levirate may have been a strategy to preserve an estate shared by two brothers. The strong connection between levirate and the preservation of family estates is also supported by rabbinic commentary on Numbers 27:5:

*It was taught: The daughters of Zelophehad were wise, skilled at interpretation and righteous. They were wise in that they spoke at the proper time, as R. Samuel b. R. Isaac said: Moses was expounding the laws of levirate, as it is said, “When brothers dwell together.” [The daughters of Zelophehad] said to him: If we can be considered as a son, give us the inheritance due a son. If not, let our mother perform levirate.” Immediately, “Moses brought their case before God” (Num. 27:5).*

The argument of the daughters of Zelophehad rests on the assumption that levirate is intended to provide an heir for a man’s land; if their
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existence obviates the need for levirate, it stands to reason that they should inherit their father’s rights to a portion of the land of Canaan. The concern of their tribal leaders, that land inherited by women will be transferred to other tribes when the women marry, is alleviated when God orders women who inherit land to marry within their father’s tribe.¹⁴

While levirate remained a strategy for the transmission of landed estates to direct vertical descendants in Sasanian Babylonia, it ceased to fulfill that function among Jews in the rabbinic period. While the rabbis offered legislation regarding inheritance, their laws “did not cater to the interests of the owners of large estates; they were more geared to ‘middle class’ farmers, the rabbinic ba’al ha-bayit, who operated the family farm with the help of family and hired workers.”¹⁵ The type of property most commonly inherited by Jews in this period was no longer ancestral land and thus did not require preservation through levirate. Commentaries on Numbers 36 claim that daughters who inherit no longer need marry into their father’s patrilineage.¹⁶ One of the primary motivations, then, for employing levirate and for assigning the children of levirate to the deceased no longer came into play.

Some rabbinic legislation may well be a response to changing conditions on the ground. However, rabbinic law must also be evaluated in light of the rabbis’ tendency to imagine an ideal society. It is important when dealing with rabbinic texts to consider the ideal as well as the real. We must consider not only the setting in which the rabbis created law, but the worldview they sought to impose, or at least disseminate, through legislation. Rabbinic law displays a strong interest in the family and in legislating significant aspects of family life.¹⁷ Incest laws dictate whom one may marry and with whom one may not have sexual relations. Laws control marriage and divorce, arguing that the creation and dissolution of marriage should be supervised by those who are well versed in family law, that is, rabbis. The responsibilities of each partner in a marriage are spelled out, as are the responsibilities of parents and children toward each other. Inheritance, the transfer of property from one family member to another, is also regulated. Through all of these laws, the rabbis sought to promote orderly family life and to assert their authority as (would-be) leaders of the Jewish community.¹⁸ The rabbis also maintain an interest in genealogy, but their interest is not tied to determining or
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maintaining the tribal connections featured in the Hebrew Bible. Genealogy, or, more precisely, an individual’s ability to identify his or her ancestors, is required to demonstrate the individual’s marriageability. The rabbis may have been acknowledging the importance of lineage in their community and may have been influenced by the importance of lineage in the surrounding cultures, but they also sought to exercise authority in determining who could marry whom.

Although rabbis had a strong interest in supporting the family, insofar as the family when properly regulated was a source of order and sanctity, family and family responsibilities offered a potential challenge to rabbis and rabbinic leadership. Rabbinic literature, particularly stories in the Bavli, acknowledges the tension between family life and the study of Torah. While marriage was valuable as a legitimate outlet for a man’s sexual desires, the responsibility of providing for a wife and children compromised a man’s ability to devote himself to Torah. Furthermore, rabbinic stories evince anxiety as to the ability of men to reproduce themselves as scholars through procreation. If students were a more secure legacy than sons, as some sources suggest, a family could be a distraction without providing significant benefit.

The extended family could, in theory, serve as a valuable support system for a scholar. Stories in the Bavli tell of Rabbi Akiba benefiting from the wealth of his rich father-in-law, albeit after years of poverty. One might imagine a sage receiving financial support from his father and brothers while he devoted himself to Torah. At the same time, rabbinic tradition offers stories that suggest Torah study might alienate a man from his family. According to one story, Rabbi Eliezer ben Hyrkanus was almost disinherited by his father at the urging of his brothers because he “abandoned” the family to study Torah. The language of the story suggests a tension between family and Torah, with the teacher becoming a replacement for the biological father. Stories like this one and others that portray sages and their families making enormous sacrifices to facilitate the study of Torah suggest that, for the rabbis, family was valuable—particularly when the wife respected her husband’s devotion to Torah—but also served as competition for the attention of husbands and fathers who were sages.

Furthermore, stories that describe the teacher–student relationship as comparable or preferable to the father–son relationship may help us
understand the rabbis’ focus on the nuclear family rather than the extended family. The adult free Jewish male is the central player in rabbinic law. Within the nuclear family, the adult male is the undisputed authority figure; his wife and minor children are his responsibility and are under his control. A strong extended family gives the senior adult male significant authority over his adult sons (and their wives and children). Although rabbinic law promotes honoring one’s parents, it circumscribes parental authority over adult children.

Early Israelite religion was centered in the extended family. The family’s role in religion was diminished during the period of the monarchy, as centralized institutions like the monarchy and the priesthood appropriated power. The Babylonian exile brought an end to those institutions and facilitated a return to family-centric religion. Gradually, the emergence of rabbinic Judaism, with its strong emphasis on the teacher-student relationship and the transmission of traditions through discipleship, led to a diminishing of the family as a source of tradition, while promoting the family and the home as a place in which religious ritual was practiced and taught to children. Rather than discrediting the family, the rabbis co-opted it and brought it under their authority. A family unit comprising a man, his wife (or wives), and their children was the unit that best served the rabbis’ vision of the people Israel. A man might feel strong connections to his parents and siblings as well as to other members of his father and mother’s extended families, and might develop ties to his wife’s family as well, but his primary role was that of householder, a role in which he controlled others and was answerable to the will of God as interpreted by the rabbis.

Families are in a constant state of flux. They grow and shrink as members are born, marry, and die. They adapt to economic and social changes, adopting new structures to deal with changes. Within a family, individuals play a variety of roles, assuming new roles when circumstances permit or demand. Levirate is a strategy by which a family seeks to respond to an untimely death, one that leaves the deceased without the preferred heir and his widow with no tangible link to her husband’s family. Levirate offers a solution based on substitution, offering a man’s brother to the widow in place of her husband and seeking to create a child to fill the place of the dead. The family remains undisturbed as far as possible and, if the levirate union is successful in producing a child,
may be “resurrected” insofar as a man’s death is more “normal” if he leaves children.

Rabbinic law rejects the idea that a family can be put back together through levirate. Individuals cannot be replaced by other individuals, even their brothers. Death ends marriage and a man’s obligation and ability to procreate. A widow is released from the obligations of marriage through her husband’s death. Nonetheless, in response to the law in Deuteronomy, the rabbis preserved levirate in name. They transformed it, acknowledging that the levir and his sister-in-law are bound to each other as a result of their brother and husband’s death. The bond can be dissolved through halitza or confirmed through levirate. In the former case, the ritual of halitza transforms the yevama into a normal widow, freeing her to remarry. In the latter, she and the levir create a normal marriage. In both cases, death may lead to the establishment of new families rather than the re-creation of the old family. By preserving levirate, the rabbis acknowledge the authority of the Torah, from which they draw their own authority. Through their transformation of levirate, the rabbis assert their authority over the family and acknowledge that families are composed of individuals who are not interchangeable and who must have some voice in determining their position within the family. The claims of the dead on the living—and on the yet unborn—are dismissed. Death ends one person’s claims on another, leaving the living to assume new roles.
Notes

Introduction (pages xv—xxvi)

1. While rabbinic law assumes the possibility of polygyny, descriptions of the nuclear family in rabbinic literature tend to focus on a husband and one wife.

2. Contemporary scholars recognize the Roman family as a “core nuclear family, i.e. the conjugal couple and dependent children,” located in a household that might include other members of the extended family, i.e., a widowed mother or an unmarried adult child, as well as servants and slaves (Beryl Rawson, ed., Marriage, Divorce, and Children in Ancient Rome [Oxford: Oxford University Press, 1966], 2). At the same time, Roman law allowed the paterfamilias to retain considerable control over his adult sons and daughters, even after marriage. For discussions of the Roman family, see Rawson, ed., Marriage, Divorce, and Children in Ancient Rome, and Beryl Rawson, ed., The Family in Ancient Rome: New Perspectives (Ithaca, N.Y.: Cornell University Press, 1986).

3. Many studies of Jewish marriage understand “levirate” to be an adjective describing a specific form of marriage. However, “levirate” is used regularly in kinship studies as a noun to describe a union between a widow and a man from her deceased husband’s kin. It is recognized as a noun by dictionaries, which identify “leviratic” or “leviratical” as adjectival forms of the noun. In this book, I use “levirate” as both a noun and an adjective, preserving the common use of the word in both Judaica and social science research.

While some societies mandate levirate even when the deceased leaves children, Judaism mandates it only when there are no surviving children or grandchildren.


5. Ps. 133:1.

6. The Hebrew Bible uses masculine nouns and verbs to refer to the child born of the levirate union. Later commentators explore the role of female offspring in obviating the need for levirate.

7. The Bible does not consider the possibility that a widow might not want to enter into a levirate union. Implicit in the biblical text is the likelihood that she has no choice in the matter. As we will see in Chapter 5, later authorities do
acknowledge that a woman might prefer to avoid levirate, and even offer such a woman some judicial support.


10. Gen. 38; Ruth 3.

11. It is also possible that there were Jews, particularly in Babylonia, where plural marriage and levirate were practiced by the majority culture, who condoned a man’s taking responsibility for his brother’s widow. The rabbis may have taken a relatively neutral approach to levirate, neither promoting nor condemning it under all circumstances, but reworking it to accord with their concerns about family, incest, and inheritance.

12. Scholars dispute the dating of the Tosefta, with some arguing for an early third century date and others for a date as late as the fifth century.


1. The Institution of Levirate (pages 1–22)


2. See Chapter 2.

3. For an extensive discussion of the uses of cross-cultural comparison to deepen our understanding of ancient Judaism, see Eilberg-Schwartz, *The Savage in Judaism*. Eilberg-Schwartz notes that the requirement that widows marry “their nearest male relatives” was one of the commonalities anthropologists noted between American Indians and the ancient Israelites (32).


9. Ghost marriage was practiced by the Zulu and the Nuer, who also employed levirate when a man left a widow. See Max Gluckman, “Kinship and Marriage Among the Lozi of Northern Rhodesia and the Zulu of Natal,” in A. R. Radcliffe-
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11. The assignment of the children of a levirate union to the new partner is one concession to objections to levirate. This is the practice among Christian and Moslem Dukawa. Frank Salamone, “Will She or Won’t She? Choice and Dukawa Widows,” in Potash, ed., *Widows in African Societies*, 168. This is also the practice among some Arabs today; widows may marry their husband’s kin, but the unions are not regarded as levirate and the children are the legal offspring of the new husband.
17. In some cases, the close relationship between the widow and the levir would generally be forbidden, but the closeness is ignored through cognitive dissonance. See Mona Etienne, “Contradictions, Constraints and Choices: Widow Remarriage Among the Baule of Ivory Coast,” in Potash, ed., *Widows in African Societies*, 253–258. Etienne argues that the legal fiction that allows for such unions among the Baule removes these unions from the category of levirate and notes that the children of these unions are assigned to the genitor rather than the deceased.
21. This freedom is not necessarily absolute; a surviving spouse in many places will be responsible for the debts of the deceased spouse. However, in such societies, the death of a spouse leaves the survivor free to remarry or to refrain from remarriage as he or she chooses.
29. An additional consideration might be the age of widows interviewed by Oboler. Most were older and resided with adult sons. She agrees that younger widows have more incentive to accept levirate unions, but her data indicate that even they often choose not to do so.
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30. Salamone, “Will She or Won’t She?” 152–174.
31. Salamone, “Will She or Won’t She?” 160–163.
32. See note 11 in this chapter.
33. Salamone, “Will She or Won’t She?” 164–165.
34. See Chapter 2.
35. See Chapter 5.
42. Harlan and Courtright, eds., From the Margins, 6.
43. Harlan and Courtright, eds., From the Margins, 13.
45. Wadley, “No Longer a Wife,” 94.
52. Deut. 25:5; Gen. 38.
54. Today, in some states that is still the case; a man may demonstrate through DNA testing that he is not the biological father of his wife’s children and still be required by law to support those children. In such cases, the man remains the “social father” of the children despite having proved that he is not their biological father.
55. Quale, A History of Marriage Systems, 125.
57. Quale, A History of Marriage Systems, 93.
58. Evidence of psychological discomfort with levirate also surfaces in African communities. Writing about the Swazi of Africa, Hilda Kuper observes, “By the custom of the levirate, the youngest brothers are a wife’s potential mates, and they may call her jokingly ‘my wife,’ to which she will reply ‘my husband.’ But it is dangerous to show too much friendliness during the husband’s lifetime lest they be accused of causing the death. The levirate relationship is fraught with difficulties and is in fact never gladly accepted by a brother, particularly if he has his own wives.” Kuper, “Kinship Among the Swazi,” in Radcliffe-Brown and Forde, eds., African Systems of Kinship and Marriage, 109.
59. For a discussion of the interplay between Christianity and traditional marriage practices and its impact on choices made by African widows, see Potash, “Widows of the Grave,” 34 – 35. Salamone (“Will She or Won’t She?” 168) notes that while Christian and Muslim Dukawa practice levirate, the children of the union are treated as the offspring of their biological father, not of the deceased.
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This suggests a compromise between older marriage practices and the dictates of new religious traditions that discourage levirate.

2. Levirate from the Hebrew Bible Through the Mishnah
(pages 23–44)


5. For the latter understanding of the phrase, see Eryl W. Davies, “Inheritance Rights, Part 2,” Vetus Testamentum 31:3 (1981), 264–266.

6. Millar Burrows argues that Israel adopted and adapted the levirate law from the Canaanites. He insists that while the Canaanites saw levirate marriage as inheritance of the widow by the husband’s clan as part of his estate, the Israelite elements added by the Deuteronomist to the Canaanite law indicate that the purpose of the levirate law in Israel was “carrying on the life and name of the dead.” See Burrows, “Levirate Marriage in Israel,” Journal of Biblical Literature 59 (1940), 23–33.


8. Num. 27:8–12.

9. Frederick Greenspahn, When Brothers Dwell Together (New York: Oxford University Press, 1994), 53. Greenspahn argues that there is no need to preserve the family lineage through levirate, since the deceased’s line, i.e., his father’s line, can be continued through the remaining brothers. Greenspahn doubts that concern for individual mortality in ancient Israel could be the motivation for levirate. Those scholars who see in biblical texts indications of ancestor worship would presumably disagree.


19. For consideration of Onan’s actions as an example of fraternal conflict in
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Genesis, see Devora Steinmetz, From Father to Son: Kinship, Conflict and Continuity in Genesis (Louisville, Ky.: Westminster/John Knox, 1991).
22. It should be noted that discrepancy between narrative and law in the Hebrew Bible is not unique to levirate marriage. For example, Jacob marries two sisters, forbidden in Lev. 18:18.
23. The same conclusion might be drawn from the Book of Ruth.
26. This is the solution employed by the rabbis.
31. Ruth 1:11–13. The scenario described by Naomi is problematic in any event. Any sons she would have, were such a thing possible, would be only half-brothers to Mahlon and Chilion, sharing the same mother but not the same father. Such brothers would be exempt from levirate according to later traditions, since only paternal brothers have such an obligation. Furthermore, these would not be brothers who “dwelled together” and would thus be exempt on additional grounds. We should probably read Naomi’s words as encouragement to her daughters-in-law to return to their families of origin; she stresses that she has no hope of providing husbands for them.
33. There is some ambiguity in the meaning of Ruth 4:5. This ambiguity arises from a difference between the qeri and ketiv traditions of the Masorah. The qeri “qanita” suggests that the kinsman who redeems the property must also marry the widow, but the ketiv “qaniti” would imply that Boaz intends to marry Ruth even if the other kinsman redeems the property. For a discussion of this question, see Bush, Word Biblical Commentary: Ruth/Esther, 227–229.
36. It is surely not coincidental that these unions, irregular as they may be, culminate in the birth of direct male ancestors of King David. This is particularly significant in the Book of Ruth, which concludes with a genealogy tracing David’s ancestry back to Boaz and Ruth.
37. Ruth 4:11.
38. Gen. 46:12; Num. 26:19. The Bible does not use the words “without children” in referencing the death of Onan, but it is clear that he had no offspring.
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41. Davies, “Inheritance Rights, Part 2,” 261. Davies does not regard the ritual described in Deut. 25 as punishment.
45. Davies, “Inheritance Rights, Part 2,” 261. Davies does not regard the ritual described in Deut. 25 as punishment.
48. The vulnerability of widows in Israelite society is attested to in the many biblical exhortations to care for widows and orphans.
52. Gen. 15:2–3; 30:1–2; I Sam. 1.
53. For prayer, see Gen. 25:21 and I Sam. 1:10ff.; for surrogacy, Gen. 16:1–2; 30:3ff.
54. Gen. 15:2–3 and Num. 27, respectively.
55. Num. 36:5–9 and Lev. 25:25, respectively.
60. *The Testament of Judah*, X, 1–6, in Charles, *The Testaments of the Twelve Patriarchs*, 80. Tamar is described in *The Testament of Judah* as “a daughter of Aram.” This pedigree serves a dual purpose; it explains Judah’s wife’s antipathy toward Tamar, a non-Canaanite, and makes her a more suitable sexual partner for a member of the patriarchal family.
64. As we shall see in Chapter 4, the rabbis’ definition of “potential parents” is an optimistic one, encompassing individuals who might, in fact, be less than likely to produce biological offspring.
65. M. Yev. 2:3.
68. M. Yev. 4:10.
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69. M. Yev. 4:3.
70. M. Yev. 4:4.
71. M. Yev. 4:7.
72. M. Yev. 4:7.
73. M. Yev. 6:1.
74. T. Yev. 7:2; M. Yev. 5:1–6.
75. T. Yev. 7:2.
77. M. Ket. 4:12.
78. For the former argument, see Belkin, “Levirate and Agnate Marriage,” 298, 329. For the latter, see Tal Ilan, Jewish Women in Greco-Roman Palestine (Peabody, Mass.: Hendrickson Publishers, 1996), 155.
80. M. Yev. 2:1–2. See also Sifre Deuteronomy 288.
81. Sifre Deuteronomy 288.

3. Mapping the Family (pages 45–96)
6. T. San. 10:10; B. Ket. 44a; Y. Ket. 4:4. This usage reflects the exhortation in Deut. 22:21 that a woman whose husband brought a claim against her virginity should be stoned at “the entrance to her father’s house.” See also Num. 30:4; 30:37.
7. M. Taanit 4:2 imagines the priests in a given mishmar living in the same town.
8. Num. 1:20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42.
10. Cited in Steinberg, Kinship and Marriage in Genesis, 22.
11. The Bavli proposes that the land in question is the family burial plot.
12. B. Taanit 31a. This suggests that while children were credited to their father’s lineage, the lineage of the mother was a factor in determining social position as well.
13. For named individuals, T. Peah 4:11. For the latter, T. Yev. 1:10; M. Arakhin 2:4.
14. B. Yev. 15b; B. RH 18a; B. Ket. 10b; B. Hullin 87a.
15. B. Yev. 22b.
17. B. Shabbat 21b; B. RH 30a.
18. B. Sukkah 28b; B. Qid. 34a; B. Arakhin 3b.
20. Baker discusses the architecture of houses in Roman Palestine and argues that the claim that excavated houses must have been used as residences by extended families cannot be substantiated. Her work suggests the mingling of
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private and public space in Roman Palestine, as well as the conjunction of residential and business space. See Baker, Rebuilding the House of Israel, 34–47.

21. For the argument that marriage, together with the establishment of one’s own household, was a marker of adulthood in Greco-Roman society and among Jews in Palestine, see Satlow, Jewish Marriage in Antiquity, 12–17.

22. Anthropologists use the term “status” to indicate a position, while “role” indicates the behaviors that are associated with that position. See Burton Pasternak, Introduction to Kinship and Social Organization (Englewood Cliffs, N.J.: Prentice-Hall, 1976), 124–125.


25. For a full discussion of these systems, see Pasternak, Introduction to Kinship, 129–138.

26. Such an analysis might be interesting. Rabbinic sources frequently portray rabbis addressing their students as “my son.” Rabbis also frequently address women outside of their family as “my daughter,” often when those women come to them for judgment or assistance. Wives, sometimes referred to in indirect speech as “my house,” are also sometimes addressed directly as “my daughter.” One could certainly claim that the teacher–student relationship was seen as analogous to a father–son relationship (see Daniel Boyarin, Carnal Israel [Berkeley: University of California Press, 1993], 206–212). We might argue that the rabbis’ tendency to address women, both their own wives and nonrelatives, as “my daughter” reflects the cultural belief that women were under the authority of men and that men were expected to protect and guide women, even adult women.


28. Gen. 20:12. Note the ambiguity in the word “sister,” which Abraham must modify by explaining that Sarah is “my father’s daughter though not my mother’s” to indicate that he and Sarah could indeed legitimately marry.

29. The term hoten appears in Ex. 3:1 et al. The term hotenen is used once in the Hebrew Bible, Deut. 27:23. Hamor is the more frequently used term; see Ruth 1:14 et al. Hatan is used in Gen. 19:12 et al. Kalla is used in Gen. 11:31.

30. The masculine yavam appears only once, in Deut. 25 in the Torah’s discussion of levirate. The feminine yevama is used in Deut. 25 and also appears in Ruth 1, where it describes Ruth’s relationship to Orpah, the widow of her husband’s brother.

31. The compound term eshet ah (the wife of the brother) is used in discussing incest. This distinction reflects the language of the Torah and distinguishes between a licit sexual relationship between a man and his brother’s wife, i.e., levirate, and an illicit relationship.

32. Gen. 11:31 et al. In some cases, grandsons are referred to as “sons” (Gen. 32:1).

33. Aramaic words for grandfather and grandmother appear a few times in the Bavli, in connection with inheritance (B. Yev. 38a; B. BM 39a; B. BB 125a–b). These words also mean “old man” and “old woman;” they can be identified as familial terms only through context.

34. Lev. 20:20.

35. Lev. 18:13–14; 20:19.

36. See note 19 in this chapter.

37. Lev. 21:2.
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38. The source of a husband’s right to inherit from his wife is debated at B. BB 118b–13a. Later commentators are divided as to the nature of that right, with some arguing that it is biblical and others, including Maimonides, arguing that it is rabbinic.

39. Men married to sisters in a culture in which daughters do not ordinarily inherit may also be able to have a close relationship because they have no shared economic expectations and therefore do not see each other as rivals. The prohibition against marrying two sisters also ensures that these men will be less likely to regard each other with jealousy or suspicion.

40. T. Ket. 10:2; B. Ket. 51a; B. BB 140a–b. In these passages, the term “the daughter of the wife” is used.

41. Pasternak, Introduction to Kinship, 28.

42. Pasternak, Introduction to Kinship, 29.

43. Pasternak, Introduction to Kinship, 29–41; Fox, Kinship and Marriage, 56–71.

44. Unlike the other prohibitions in Lev. 18, the one involving the wife’s sister is specifically fixed in the wife’s lifetime. A man, according to Jewish law, is permitted to marry his deceased wife’s sister.

45. Tosafot to b. Yev. 2b s.v. bito.

46. B. San. 76a.

47. Lev. 18:16; 20:21. The Talmud (B. Yev. 55a) understands the prohibition of Lev. 18:16 to apply after the husband’s death.

48. This “problem” reflects a rabbinic reading of the Bible. It need not be a problem when the Bible is read through the lens of contemporary scholarship. See Weisberg, “Levirate Marriage and Halitza in the Mishnah,” 54 n. 30.

49. Mekhilta deRabbi Ishmael, BaHodesh 7; Sifre Deuteronomy, Ki Tetze 233.

50. The Leviticus prohibition also applies when the couple divorces, regardless of whether there were children.


52. Y. Yev. 1:1, 2b.

53. Y. Yev. 1:1, 2c.

54. The Mishnah also regards levirate marriage as illicit when the widow is discovered to be pregnant with the deceased’s child after the levirate union has taken place. Levirate widows are required to wait three months before performing levirate marriage or halitza (M. Yev. 4:30) to ensure that they are not pregnant. M. Yev. 4:1–2 deals with cases in which the waiting period was inadequate or was ignored. If the child is born viable, the halitza is retroactively invalid. If the levir and the widow had married, the union is invalid and they are required to make a sin offering.

55. M. Yev. 2:3.


57. In fact, the co-wives of those women are permitted should their husband die, as we shall see in our discussion of M. Yev. 1:3.

58. B. Yev. 3b.

59. B. Yev. 3b.

60. M. Yev. 4:11.

61. M. Yev. 2:3.

62. M. Yev. 8:4–5, T. Yev. 2:5 distinguishes between a sterile woman, who does not require halitza, and a barren or elderly woman, who may enter into a levirate marriage or perform halitza. Similarly, the Mishnah distinguishes between various types of eunuchs. These distinctions suggest that the tannaim were willing
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to allow levirate marriage or halitza when there was even, in theory, a slim possibility of procreation, but not when there was no possibility at all.
63. T. Yev. 6:9.
64. Y. Yev. 11, 2b; B. Yev. 39b.
68. There are societies in which levirate is not viewed as marriage, but even in many of those societies polygyny is permitted.
69. Pasternak, Introduction to Kinship, 62.
73. Pasternak points out that the words “endogamy” and “exogamy” must be understood in the context of a certain group; a group might be endogamous or exogamous with regard to one variable but not another.
75. Satlow, Jewish Marriage in Antiquity, 156 – 158.
76. Ilan, Jewish Women in Greco-Roman Palestine, 76 – 77.
77. B. Ber. 56a; B. Ned. 23a.
80. For a detailed discussion of descent, see Pasternak, Introduction to Kinship, ch. 8. Different types of descent systems are described in Fox, Kinship and Marriage, chs. 4 – 6.
82. In fact, this specification is not explicitly stated in the Torah, but is derived from an “extra” word. The Bavli’s question is therefore why each statement contains that extraneous word.
83. The Bavli also argues the opposite position, acknowledging that we can be certain who a person’s mother is, but that paternity cannot be certain!
84. While sons take precedence over daughters with regard to their father’s estate, daughters have the legal right to inherit. A daughter’s rights as her father’s heir give her precedence over other members of her father’s patrilineage, his father, brothers, nephews, etc. Furthermore, a daughter’s rights are not abrogated when she marries out of her father’s patrilineage, and she transmits those rights to her children, despite those children’s membership in another patrilineage.
85. Fox writes, “[E]ven in a patrilineal system, a man has matrilineal relatives, and it is often the case that they are very important in his life.” In fact, Fox argues, the absence of economic or inheritance rights among relatives may lessen tensions between them and offer an individual a strong support system (Kinship and Marriage, 132 – 133).
86. Pasternak, Introduction to Kinship, 104.
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87. B. MQ 20b.
88. Sifra on Lev. 21:2.
89. This standard is also found in the Yerushalmi, MQ 3:5 (82c, 82d–83a).
90. Also in Y. MQ 3:5 (83a).
91. The most surprising aspect of the list is an omission; we are not told that a son is forbidden to testify or serve as a judge in a case involving his father. The Mishnah printed in the Vilna edition of the Babylonian Talmud does not mention the father; both omissions may be explained as omissions of the obvious, given that the prohibition on testimony by relatives is based on Deut. 24:6: “Fathers shall not be put to death for sons, nor sons be put to death for fathers.”
93. The term gizo is understood to refer to the husband of a man’s wife’s sister, not the wife’s brother. Both of these individuals would in theory be included in the prohibition without being singled out, since they are respectively the son-in-law and son of another prohibited relative, the father-in-law; it is not clear here why the wife’s sister’s husband is mentioned explicitly.
94. B. San. 28a.
95. In theory, the list of individuals included in each generation should be broader, with Ego’s father’s sister’s husband and his mother’s brother and sister’s husband in the first generation, Ego’s sister’s husband in the second generation, and Ego’s nephews and niece’s husbands in the third. This is the only section of the sugya that employs this generational model, and it is not clear that the Bavli uses “generations” the way we might in constructing a family tree.
96. B. San. 28a.
97. B. San. 28a.
98. M. BB 8:1.
100. The Mishnah does not list a man’s sisters or the sisters of his father as his potential heirs, but their ability to inherit when they have no brothers can be inferred from the right of daughters to inherit from their father if he has no sons. Furthermore, the mention of a man’s sister’s sons as his possible heirs indicates that a sister has inheritance rights with regard to her brother; the rights of nephews to inherit from their maternal uncle are derived solely from their mother.
101. This includes the individual’s daughters as well as sons (B. BB 113a–b).
102. M. BB 8:2.
103. B. BB 109b, 110b.
104. B. BB 109b–111a, 111b. There is a rabbinic dispute as to whether a husband’s right to inherit his wife’s property can be traced to the Bible or whether it is a rabbinic enactment.
105. B. BB 108b.
106. B. BB 108b–109a discusses the preference for vertical rather than horizontal inheritance and draws a connection between vertical inheritance and levirate marriage: a man’s sons and even daughters take precedence over his brothers precisely because either a son or a daughter obviates the need for levirate.
107. B. BB 109b explicitly acknowledges that allowing daughters to inherit will lead to property leaving the patrilineage.
109. B. Yev. 3a.
110. The specification of a man’s sister on his mother’s side and his mother’s sister in no way implies that maternal relatives are “closer” than paternal relatives. Rather, the Mishnah has no need to list a man’s sister by his father or his fa-
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ther's sister, since these women cannot marry a man's brother by the same father and therefore never could be in a situation that calls for levirate marriage.

111. B. Yev. 5a.

112. While there is some rabbinic attestation to such marriages, we should not make broad assumptions about marriage patterns from the cases found in the Mishnah and in the Talmuds. Such marriage patterns are common in some cultures. The first marriage creates bonds between the families and may lead to further marriages among family members. In addition, societies in which adult brothers live together might promote this type of marriage pattern, since sisters, or women from one extended family, may live and work together well, thus promoting harmony within the extended residential family.

113. Pasternak, Introduction to Kinship, 124.

114. Leviticus contains no explicit prohibition on sexual relations between a man and his daughter. This prohibition is taken as a given by the rabbis, who "learn" it through biblical exegesis.


117. The distance between Ego and this maternal uncle is also recognized in the laws of inheritance. Ego might, in theory, inherit the property of a paternal uncle or a maternal uncle, if these uncles have the same father as Ego's parents. Those uncles who share only mothers with Ego's parents could not bequeath property to Ego; rather, in the absence of children, their property would devolve on siblings on their father's side.

118. Anthropologists distinguish between referential terms, the terms that an individual uses when asked how he is related to a given person, and terms of address, the terminology he employs to speak to that person (Pasternak, Introduction to Kinship, 130). The rules discussed in this sugya and others indicate that the rabbis employ terms of reference that distinguish between maternal and paternal relatives, but that terms of address may have been less precise.

119. Ego is forbidden to marry his wife's sister, which would suggest, following the general principle enunciated by Judah bar Shela, that he ought to be forbidden to marry the wife of her male "counterpart," i.e., the wife of his wife's brother. The Bavli does not comment on this apparent difficulty, nor do the classical commentators. Perhaps the fact that the prohibition against a wife's sister is limited to the wife's lifetime softens the prohibition such that the rabbis do not accord it the same severity accorded to other incest prohibitions.

120. Y. Yev. 2:4, 3d.

121. Fox, Kinship and Marriage, 114–120.

4. Brothers (pages 97–122)

1. Steinberg, Kinship and Marriage in Genesis, 137–147.

2. Lev. 19:17; 25:35–36; Num. 32:6; Deut. 20:8 et al.


5. Gen. 27:27.


7. Lev. 25:48. Since the Torah continues by explaining that, in the absence of "brothers," a man should be redeemed by "his uncle or his uncle's son, or anyone of his family who is of his own flesh" (Lev. 25:49), we can assume that the brothers referred to in the preceding verse are actual brothers rather than kinsmen in general.

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8. Ps. 133:1.
10. M. Peah 3:5.
11. M. Betsa 5:3.
15. For this reading of Gen. 38, see Steinmetz, *From Father to Son*, 117–120.
17. Ruth 3:12.
21. T. Yev. 11:2; Sifre Deuteronomy 288.
22. M. Yev. 2:5.
23. B. Yev. 22a–b. The Mishnah twice prohibits an Israelite yevama to her brother-in-law who is a mamzer (M. Yev. 2:4, 9:1); the bond inferred from M. Yev. 2:5 is thus understood to be a requirement to perform halitza. Unlike a child by a slave woman or a non-Jewish woman, a mamzer is recognized as his father’s son.
24. B. Yev. 97b argues that brothers who converted together with their mother are not forbidden to marry each other’s wives, but are not included in the laws of levirate and halitza. Because they are not legally considered brothers, their widows would be free to remarry without levirate or halitza.
25. M. Yev. 2:1–2; Sifre Deuteronomy 288.
26. B. Yev. 7b. While a man’s heirs may be male members of his patrilineage other than his son, those individuals have no standing when there is a surviving child. Thus while they may inherit from him, they do not inherit “together” with his son.
27. Rabbinic law does not allow a fetus to acquire property. Thus a child born after his brother’s death would not be one of his brother’s heirs.
29. M. Yev. 2:8; 4:5.
31. M. Yev. 3:2–3 et al.
32. M. Yev. 4:10.
33. M. Yev. 3:2.
34. M. Yev. 4:6.
36. Some resistance to assigning paternity away from the biological father can be seen in the genealogies of the Hebrew Bible. Tamar’s sons are described in genealogies as Judah’s sons, and Ruth’s son is described as the son of Boaz, not of Mahlon. See Dvora Weisberg, “The Widow of Our Discontent: Levirate Marriage in the Bible and Ancient Israel,” *Journal for the Study of the Old Testament* 28:4 (2004), 420.
37. In some societies, this responsibility might fall on the widow.
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38. B. Yev. 24a.
40. M. Yev. 4:11.
41. B. Yev. 39b.
42. M. Yev. 15:8; 15:10.
43. The Gemara acknowledges that dislike of a prospective levir might influence the yeveama’s investigation into the circumstances of her husband’s death as well.
44. See Kuper, “Kinship Among the Swazi,” 109.
45. See M. Yev. 15:4. Both a woman’s husband’s sister and her husband’s brother’s wife are assumed to be hostile to her, as is her co-wife.
47. While levirate is practiced among Jews only when the deceased left no issue, many societies practice it even when the deceased left children.
49. The Mishnah regards spitting on a person as a humiliating act (M. BQ 8:6).
50. B. Yev. 101b. Y. Yev. 12:6 (12d) echoes the Bavli but includes the widow in the conversation, implying that she has a voice in the decision.
52. B. Yev. 39a.
53. B. Yev. 39a.
54. B. Yev. 11b–112a. The awareness of a woman and her brother-in-law that they are, at the same time, forbidden to each other and potential sexual partners in the event that the woman’s husband dies without offspring can create tension between brothers-in-law and sisters-in-law, or it can lead to or justify sexual attraction. See Wendy Doniger, “Begetting on the Margin: Adultery and Surrogate Pseudomarriage in Hinduism,” in Harlan and Courtright, eds., From the Margins, 179–180; and Kuper, “Kinship Among the Swazi,” 109.

5. From Wife to Widow and Back Again (pp. 123–166)

1. M. Ket. 4:12.
2. The power of a widow under rabbinic law was considerably less than that accorded to some widows under Roman and Sasanian law. An Iranian widow could inherit a portion of her husband’s estate and could be his designated successor in the absence of a son. See Yaakov Elman, “Marriage and Marital Property in Rabbinic and Sasanian Law,” in Catherine Hezser, ed., Rabbinic Law in Its Roman and Near Eastern Context (Tubingen: Mohr Siebeck, 2003), 231–232, 258–259. A Roman wife who formally became part of her husband’s family upon marriage could inherit with his children; a wife who remained part of her natal family was not one of her husband’s heirs but retained inheritance rights in her family of origin. See Suzanne Dixon, The Roman Family (Baltimore: Johns Hopkins University Press, 1992), 41–42.
3. M. Git. 4:3.
5. M. Qid. 1:1.
6. Mishnah Yeveamot is based on the assumption that the deceased is survived
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by at least one widow and one brother. If there is no brother, the widow is presumably treated like a “normal” widow (M. Yev. 15:10).


8. M. Yev. 4:5–6. B. Yev. 39a–b speaks of “pushing” the eldest brother to enter into levirate marriage or submit to halitza but does not explain whether such urging can go beyond verbal encouragement.

9. According to Naomi Steinberg, the Bible also makes a distinction between a widow with children and one without children, referring to the former as ishahalmana and the latter as eshet-hammet, the wife of the deceased. Steinberg argues that the latter is to some degree still her (dead) husband’s wife. See Steinberg, “Romancing the Widow: The Economic Distinctions Between the Almānā, the ḫāṣa-almānā, and the ḥāset-hammēt,” in J. Harold Ellens, Deborah L. Ellens, Rolf P. Knierim, and Isaac Kalimi, eds., God’s Word for Our World (London: T. & T. Clark International, 2004), 327–343.


13. Judith Hauptman, Rereading the Rabbis (Boulder, Colo.: Westview Press, 1998), 4. Hauptman’s claim would be disputed by many scholars who see Roman and Sasanian law as valuable for discussing rabbinic law and considering what influenced it. See Elman, “Marriage and Marital Property,” 227–276. Hauptman’s objection to such comparisons most likely reflects her insistence that the rabbis did, in fact, improve the lot of Jewish women and her reluctance to consider comparisons that suggest the rabbis ignored or rejected options that might have been even more favorable to women.


15. Hauptman, Rereading the Rabbis, 4.


19. B. MQ 20b.

20. M. BB 8:1; M. Ket. 4:7, 12.

21. The exception to the former rule is the wife’s sister, who is forbidden to the man only in his wife’s lifetime.

22. M. Yev. 4:10.

23. This is in fact the case in many societies that practice levirate. Steinberg suggests that it explains the use of the term eshet-hammet to describe a childless widow. See Steinberg, “Romancing the Widow,” 338–340.

24. This argument is made by Wegner, Chattel or Person? 97. In My Wife I Called “My House,” Labovitz cites several rabbinic sources in which the levirate widow is compared to property that is jointly inherited by several brothers. See B. Sotah 43b; Y. Yev. 10:1; Y. Sotah 2:5; and Y. Sotah 8:6.


26. M. Yev. 2:5 speaks of “a son of any type, even a mamzer.” Sifre Deuteronomy 288 understands the word ben in Deut. 25:5 broadly to include grandchildren. Tannaitic sources do not require levirate marriage when the deceased left daughters or granddaughters.
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27. Sifre Deuteronomy 288 and M. Yev. 2:1–2. Other factors that determine whether the brother is a suitable candidate for levirate marriage can be found at M. Yev. 8:5; 9:1–3 and T. Yev. 11:1–2; 12:2.

32. T. Yev. 2:5.
33. M. Yev. 8:5.
34. B. Yev. 36a.
35. M. Yev. 4:11 does recommend that in a situation in which the levir prefers halitza and one of the widows is already disqualified from marrying a priest, the levir should perform halitza with that woman, leaving her co-wife free to marry a priest. While this recommendation does allow at least one of the widows wider possibilities for remarriage, B. Yev. 44a emphasizes the desire to make women available to priests, not the desire to make priests available as husbands. It cites Rabbi Judah HaNasi as saying, "A man should not pour out water from his cistern when others need it"; i.e., a man should not perform halitza with a woman who would otherwise be suitable to marry a priest, denying her to other men, as long as there is another avenue for him to fulfill his levirate duty.

37. M. Yev. 4:1–2.
38. M. Yev. 10:3. The rabbis debate the status of a child born to a yevama who has remarried without halitza; the majority position holds that the child is not a mamzer. The marriage, however, must be dissolved.

40. T. Yev. 6:7.
42. M. Yev. 7:4; 9:4.
43. M. Yev. 4:3.
44. M. Ket. 8:1.
45. M. Ket. 8:1. For a detailed discussion of a married woman’s right to dispose of her property, see Elman, “Marriage and Marital Property,” 228–238.

46. There is some disagreement among commentators and translators as to the identity of the “husband” mentioned in this mishna, some arguing that he is the yevama’s deceased husband and others arguing that he is her prospective husband, the levir. I will address this problem later in the chapter.

49. M. Yev. 4:11.
50. M. Yev. 5:1.

51. A widow could marry a man from the priestly caste, but a woman who had undergone halitza could not. An act of unsanctioned (i.e., nonmarital) intercourse could also bar a woman from marriage to a priest.

56. See Chapter 4.
57. M. Yev. 5:2; see also T. Yev. 7:2.
58. T. Yev. 2:1.
59. B. Yev. 19b cites a baraita in which the sages assert that ma'amar without the yevama’s consent is ineffective.

60. The insistence that ma'amar be part of “proper” levirate marriage also parallels the amoraic distaste for betrothal through intercourse (B. Qid. 12b). Like betrothal through intercourse, a levir’s marriage to his yevama through intercourse, without any formal declaration or act, allows for a type of “private” marriage without family or community participation or rabbinic supervision.


62. This represents a reversal of the marriage and divorce procedures, in which the man “betroths” or “divorces,” while the woman is “betrothed” or “divorced.” This language is not incidental; the Bavli insists that in marriage and divorce the man must be the initiator. At the same time, it is interesting that the Mishnah, Tosefta, Bavli, and Yerushalmi all use the masculine halatz and feminine halitza at roughly the same rate, even though the woman performs all of the required acts in the ritual.


64. This division is reflected in the language of the document attesting to the halitza, as recounted in B Yev. 39b: “Plonit the daughter of Ploni brought her Ploni brother-in-law before the court, and we recognized him as the brother of the deceased by the same father. We said to him: If you wish to enter into levirate marriage, do so; if not, stretch your right foot toward her.” The yevama “brings” the levir to the court, but he decides what the next step will be.


67. The Mishnah uses the word kof’in, which could be translated “to push,” “to force,” or “to compel.” While the redactors of the Mishnah may have wished to project the image of an active, strong court, there is no indication of how the court could have forced a recalcitrant levir to do its bidding.

68. M. Yev. 13:12.

69. Disapproval of levirate marriage with no intent of procreation is probably behind Onan’s death in Gen. 38 as well as the Torah’s observation that his actions were displeasing to God.

70. A husband had the right to annul some of his wife’s vows when he learned of them. It is possible that a husband would have approved of such a vow; there is no discussion in rabbinic literature that considers whether childless men hoped their widows and brothers would choose levirate marriage after the men’s deaths. In fact, the assignment of the children of levirate marriage to their biological father and the bestowal of the deceased’s property on the levir rather than the children of the union may have lessened any enthusiasm for levirate on the part of a childless man. It is not inconceivable that a man would support his wife’s vow under these circumstances.


73. While in fact a levirate widow might be pleased at her brother-in-law’s decision to release her, in no way is she presented as a compliant partner to his decision.

74. Wegner, Chattel or Person? 14.

75. Rabbinic texts always refer to a woman who has undergone halitza as a halitza, rather than an almana, and this term has implications for her future marriage choices.

76. Wegner, Chattel or Person? 103.
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77. Y. Yev. 4:3 (5d).
78. B. Yev. 38a–39a.
79. In some societies, rights to the widow devolve on a specific brother, the assignment being determined by birth order. While the Mishnah expects the oldest surviving brother to take primary responsibility for resolving the yevama’s status, his legal power is no greater than that of any other brother; any brother can perform levirate marriage or halitza.
82. M. Ned. 10:2.
83. B. Ned. 74a–b.
84. The Mishnah places the primary responsibility for levirate on the oldest surviving brother, but acknowledges that any brother can marry or release the widow (M. Yev. 2:8). The Mishnah also provides for asking each brother in turn to take action before turning back to the oldest and telling him to act (M. Yev. 4:5). While the Mishnah rejects the idea of an extended delay (M. Yev. 4:6), there is no mechanism to force any one of the brothers to marry or release the widow.
86. Of course, her role in the ritual does not fully empower the yevama. She cannot force the levir to appear before a court and submit to halitza. Halitza requires the consent of both parties (B. Yev. 102b). Furthermore, the levir can marry other women whether or not halitza has been performed, while the yevama is tied to him and unable to marry outside her husband’s family.
87. For examples see B. Yev. 101b, 102a, 103b, 104a, and 106a–b. The plethora of such cases, compared with the paucity of cases describing levirate, might be cited as evidence for rabbinic preference for halitza. However, it is important to remember that while halitza is a ritual that must be enacted in the presence of a court, levirate marriage can be performed without judicial supervision. Even if levirate was a common occurrence, we would not expect to find cases in which a rabbi “supervised” or “witnessed” a levirate union.
88. B. Yev. 101b.
89. Later commentaries and codes insist that the rabbis take the interests of the levirate widow into account when determining what advice to give the levir.
90. Y. Yev. 12:6 (12d).
91. B. Yev. 106a.
92. In “Refusal of the Levirate Marriage,” Yoffie claims the levir is “unworthy” because he is “from a lower socioeconomic class” (23).
93. The first exchange in the dialogue is clearly between the mother and the rabbi. It is impossible to tell if the subsequent exchanges involve the mother or the widow herself.
95. B. Yev. 112a.
96. A similar situation arises in B. Git. 35a. A woman collects her marriage settlement by making a vow before she is told that such a vow cannot be made. In
that sugya as well, the Bavli proposes a preferable way to manage the situation, one that involves an action by the court, not the woman.

97. This acknowledgment contrasts with the Bavli’s insistence in several places that a woman would prefer any marriage to being single. In eight places, the Bavli cites a proverb, “It is better to sit as two than to sit alone,” attributing this view specifically to women. See Elman, “Marriage and Marital Property,” 237–238. It is worth noting that the rabbis appealed to by women seeking to avoid levirate never cite this proverb or pressure women into levirate unions.

98. B. Yev. 93b–94a.

99. A married daughter may still inherit from her father in the absence of sons and may inherit property from her mother’s family as well. The right of a married woman to visit her parents’ home is attested to in M. Ket. 7:4, and some holiday visits are assumed in M. Pes. 8:1. A married woman is expected to mourn for her in-laws. If she is married to a priest, she may eat certain foods restricted to the priestly caste, even if she was not born into a priestly family.

100. Rashi on B. Ket. 66a, s.v. yakhol hu she’yomar.
102. See M. Yev., ch. 13. A minor girl betrothed by her father could not exercise the right of refusal, but that right was granted to a minor whose father was dead and whose betrothal was arranged by other relatives. The School of Hillel extended this right to a minor whose husband died leaving her subject to levirate.
103. M. Git. 2:7; M. Sotah 6:2.
104. In another instance, B. Yev. 4a, the Bavli insists that a yevama should not be forced to marry a man with boils.

6. Paternity and Continuity (pages 167–194)

1. Steinmetz, From Father to Son, 44–49.
2. See Chapter 2.
4. B. Yev. 22b.
5. M. Yev. 2:5.
7. M. Yev. 8:5.
8. T. Yev. 2:5; B. Yev. 91b, 119a.
10. Even those rabbis who argue that a castrated brother may impose a levirate obligation on his sister-in-law agree that levirate is not an option; the bond must be resolved through halitza.
11. B. Yev. 44b, 101a.
12. B. Yev. 119a.
13. In fact, levirate often involves assigning paternity away from the biological father. I use the term “social father” here to acknowledge that while the rabbis assume the levir is the biological father of the children born of the levirate union, biological paternity could not be established in the rabbinic period. Instead, a woman’s husband was assumed to be the father of her children and thus was given the legal rights and responsibilities attached to fatherhood.
15. For discussions of the circumstances that inform levirate in several African societies, see Potash, ed., Widows in African Societies. Some societies assign
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widows to their husbands’ male relatives, who are then the legal fathers of subsequent children. This type of arrangement is known as widow-inheritance and is distinct from levirate.

17. M. Ket. 4:30.
18. B. Yev. 24a.
19. M. Qid. 1:7; B. Qid. 29a.
20. M. Ket. 4:11.

26. It is unclear in this sugya whether the estate of the deceased was never distributed (perhaps because of the uncertainty as to the child’s claim) or whether the child is now challenging the levir’s possession of the estate.
27. Y. Yev. 4:1 (5b).
28. One could certainly argue that these cases represent the Talmud’s embrace of gray areas and its use of extraordinary cases to test general principles. Nonetheless, the rabbis’ imagining how the claimants would respond to each other can be read as awareness of the potential for conflict among family members when an inheritance is at stake. The correlation between the claims vis-à-vis the family relationship and the claims of entitlement to the inheritance certainly suggests a climate in which economic self-interest takes precedence over family feeling.
33. Rava, acknowledging the difficulty of divorcing a “bad wife” with a large marriage settlement, recommends that a man respond by marrying a second wife, who will “chasten” the first wife.
34. Song of Songs Rabbah 1:4.
37. Elman, “Marriage and Marital Property,” 231, 254. A son was still the preferred heir to a man’s estate, but a wife or daughter was preferred to a more distant male relative.
38. B. Taanit 30b; B. BB 120a.
41. Dixon, The Roman Family, 112. Adoption was used to secure a son and heir for a man; the wife of the adoptive father did not become the legal mother of the adopted son.
42. The promise to support stepchildren is treated as a stipulation made to one’s wife upon marriage, a clause in her marriage document. T. Ket 10:2; B. Git. 51a.
43. B. MQ 23a permits a man to remarry immediately after his wife’s death if he has small children, in order to provide the children with a caregiver. However,
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a story in B. Ber. 56a suggests that a stepmother might not be concerned with the welfare of her husband’s children by a previous wife.

44. B. Meg. 13a; B. San. 19b.

45. My discussion of levirate in Sasanian Babylonia is taken from my article “The Babylonian Talmud’s Treatment of Levirate Marriage,” 63–65. For a more detailed comparison of rabbinic and Sasanian law on marriage, including inheritance and succession, see Elman, “Marriage and Marital Property,” 227–276.

46. Gafni, “The Institution of Marriage in Rabbinic Times,” 23; and Ze’ev Falk, *Jewish Matrimonial Law in the Middle Ages* (Oxford: Oxford University Press, 1966), 7–10. No one argues that polygyny was widespread among Babylonian Jews; as Gafni notes, it was probably restricted to the well-to-do because of the financial burden of supporting multiple wives and their children.

47. Nowhere in the Bavli is an objection to polygyny offered to justify halitza over levirate marriage. Such objections—by levirs, levirate widows, and the wives of levirs—are recorded in a response found in the Cairo Genizah. See Mordechai Friedman, *Ribui Nasim BeYisrael* (Jerusalem: Mossad Bialik and Tel Aviv University, 1986), 129–131, 137, 144, 146.

48. See Elman, “Marriage and Marital Property,” 252, on the religious problems of dying without a son.


51. Ehsan Yarshater, ed., *Encyclopaedia Iranica* (London and Boston: Routledge and Kegan Paul, 1982–2004), vol. 4, fasc. 5–8, 647. While this article assumes that widows were “obligated” to enter into a levirate union, Elman notes that there was significant financial incentive for a widow to provide a posthumous son for her deceased husband.

52. Yarshater, *Encyclopaedia Iranica*, vol. 4, fasc. 5–8, 648.

53. M. Yev. 4:7; Yarshater, *Encyclopaedia Iranica*, vol. 4, fasc. 5–8, 648.

54. A daughter could inherit her father’s estate, but a son needed to preserve a man’s name and lineage.

55. Yarshater, *Encyclopaedia Iranica*, vol. 4, fasc. 5–8, 647. A man who entered into a levirate union was providing an heir for another man and would presumably obtain an heir for himself through a different type of marriage.


58. Gen. 30:1.


60. B. Yev. 62b.

61. At B. Hag. 14b–15a, the Bavli acknowledges the possibility of conception through a woman’s contact with sperm-laden sheets. It is not clear whether a man could be declared the father of a child conceived in such a way; the primary concern of the Bavli is the status of a woman who is pregnant yet claims to be a virgin. For a discussion of paternity in a contemporary halakhic context, see Susan Martha Kahn, *Reproducing Jews* (Durham, N.C.: Duke University Press, 2000), ch. 3.
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64. M. Qid. 4:1–3.
65. T. Yev. 12:8. This presumption is sometimes understood as a consequence of a husband acquiring his wife and her biological functions. It is expressed in The Laws of Manu by comparing a wife to a field; just as the owner of a field owns whatever grows in the field, so too a husband may legally claim any child born to his wife. Similar statements can be found in ancient Iranian legal documents, which allow a man to arrange a temporary levirate union for his wife during his lifetime if he has been unable to father a child. Women and fields are compared in rabbinic literature (Labovitz, My Wife I Called “My House”), but the presumption that a man may claim any child born to his wife does not remove the possibility that there are circumstances in rabbinic law in which a woman may be labeled an adulteress and her children mamzerim.

66. Roman legislation and writing from the early imperial period also indicate a fair degree of anxiety surrounding marriage and the production of children, including legislation by Augustus promoting marriage and procreation, but that anxiety is related to procreation per se rather than the qualities of the children being produced. See Suzanne Dixon, “The Sentimental Ideal of the Roman Family,” in Rawson, ed., Marriage, Divorce, and Children in Ancient Rome, 100, and Dixon, The Roman Family, 119–123.
67. Boyarin, Carnal Israel, 203.
68. B. BB 58a.
69. Rabbi Yohanan’s “assistance” in creating beautiful children for other men is particularly poignant in light of a tradition that all of his own children predeceased him (B. Ber. 5b).
70. Under Roman law, all children born within a marriage were presumed to be the children of their mother’s husband (Rawson, ed., Marriage, Divorce, and Children in Ancient Rome, 27). However, the father had the right, at the time of a child’s birth, to recognize or repudiate the child; furthermore, even if a man accepted that his wife’s child was in fact his, he had the right to raise the child or to expose it (Mireille Corbier, “Divorce and Adoption as Roman Familial Strategies” in Rawson, ed., Marriage, Divorce, and Children in Ancient Rome, 64–65). Posthumous children were recognized as their father’s legal offspring and could not be rejected by their mother or another relative; the power vested in the Roman pater did not devolve on any other relative upon his death.

7. Conclusion (pages 195–205)
1. I want to reiterate that we should not assume that rabbinic texts describe the family as it was but as it ideally would be. See Alexei Sivertsev, Households, Sects and the Origins of Rabbinic Judaism (Leiden: Brill, 2005), 212.
3. M. Ket. 4:5.
4. M. Pes. 8:1.
7. M. BM 1:5; T. Eruv. 6:7; T. Pes. 7:4.
9. While the Mishnah states that sexual intercourse formalizes or completes a levirate union, even if the intercourse is nonconsensual, the expectation that
sexual intercourse will be preceded by *ma'amor*, a declaration that requires the woman’s consent, seeks to transform levirate marriage into a mutually consensual union.


14. This tradition is preserved even in the Second Temple period. Tobit 6:13 holds men with no sons liable to marry their daughters to their kinsmen on penalty of death “according to the law of the Book of Moses.”


16. B. BB 120a; Sifre Deuteronomy 233.


18. Rabbinic discussions of marriage and divorce contain statements strongly promoting rabbinic oversight of these arrangements. These statements include “Anyone who betroths does so with the consent of the rabbis and [therefore] the rabbis may annul his betrothal” (B. Git. 33a) and “Anyone who is not versed in the nature of divorce and betrothal should not busy himself with them” (B. Git. 23b).

19. M. Qid., ch. 4.

20. Richard Kalmin’s discussion of rabbinic concerns about genealogy suggest that Babylonian rabbis also used their knowledge of genealogy to promote their own interests and cast aspersions on their opponents. See Kalmin, *The Sage in Jewish Society of Late Antiquity* (London: Routledge, 1999), ch. 2.


25. It is also worth noting that there are laws that privilege the teacher–student relationship over the father–child relationship, instructing individuals to fulfill the needs of the teacher before those of the father because “the father brought him into this world but the teacher brings him into the world-to-come.”


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