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Deuteronomy 25:5–10: A Rite for the Living or for the Dead?

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Deuteronomy 25:5–10: A Rite for the Living or for the Dead?

by

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Dedication

I would like to dedicate this work to Avaline Sowards–*ana balāṭīša*.

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       I would like to acknowledge, first and foremost, my supervisor, Jo Ann Hackett. It is because of her that I have come to value so highly the role of theory in elucidating the mysteries of the Hebrew Bible; she has been absolutely indispensible in bringing this work to fruition. I would also like to thank John Huehnergard for five years of absolute wonder. More than anything else, though, I would like to acknowledge both John and Jo Ann for their unbelievable kindness. Last, but not least, I want to acknowledge my wife, who has never stopped believing in me.

Abstract

Deuteronomy 25:7–10: A Rite for the Living or for the Dead?

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This work looks at the rite presented in Deut 25:5–10 through a sociological framework. As such, it argues that ritual is a social act aimed at protecting communal interests over the interests of its individual members. More specifically, the rite described in Deut 25:5–10 was meant to act as a bulwark against infiltration of tribal land through exogamy. In later periods, it is argued that the focus of the rite narrowed to the priestly class.

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Chapter 1: Introduction

TEXT OF DEUTERONOMY 25:5–10

Deut 25:5 כִּי־יֵשְׁב֨וּ אַחִ֜ים יַחְדָּ֗ו וּמֵ֨ת אַחַ֤ד מֵהֶם֙ וּבֵ֣ן אֵֽין־ל֔וֹ לֹא־תִהְיֶ֧ה אֵֽשֶׁת־הַמֵּ֛ת הַח֖וּצָה לְאִ֣ישׁ זָ֑ר יְבָמָהּ֙ יָבֹ֣א עָלֶ֔יהָ[a] וּלְקָחָ֥הּ ל֛וֹ לְאִשָּׁ֖ה וְיִבְּמָֽהּ׃

Deut 25:6 וְהָיָ֗ה הַבְּכוֹר֙[a] אֲשֶׁ֣ר תֵּלֵ֔ד יָק֕וּם עַל־שֵׁ֛ם אָחִ֥יו הַמֵּ֖ת וְלֹֽא־יִמָּחֶ֥ה שְׁמ֖וֹ מִיִּשְׂרָאֵֽל׃

Deut 25:7 וְאִם־לֹ֤א יַחְפֹּץ֙ הָאִ֔ישׁ לָקַ֖חַת אֶת־יְבִמְתּ֑וֹ וְעָלְתָה֩ יְבִמְתּ֨וֹ הַשַּׁ֜עְרָה אֶל־הַזְּקֵנִ֗ים וְאָֽמְרָה֙ מֵאֵ֨ין[a] יְבָמִ֜י לְהָקִ֥ים לְאָחִ֛יו שֵׁ֖ם בְּיִשְׂרָאֵ֑ל לֹ֥א[b] אָבָ֖ה יַבְּמִֽי׃

Deut 25:8 וְקָֽרְאוּ־ל֥וֹ זִקְנֵי־עִיר֖וֹ וְדִבְּר֣וּ אֵלָ֑יו וְעָמַ֣ד וְאָמַ֔ר לֹ֥א חָפַ֖צְתִּי לְקַחְתָּֽהּ׃

Deut 25:9 וְנִגְּשָׁ֨ה יְבִמְתּ֜וֹ אֵלָ֗יו לְעֵינֵי֙ הַזְּקֵנִ֔ים וְחָלְצָ֤ה נַעֲלוֹ֙ מֵעַ֣ל רַגְל֔וֹ וְיָרְקָ֖ה בְּפָנָ֑יו וְעָֽנְתָה֙ וְאָ֣מְרָ֔ה כָּ֚כָה יֵעָשֶׂ֣ה לָאִ֔ישׁ אֲשֶׁ֥ר לֹא־יִבְנֶ֖ה אֶת־בֵּ֥ית אָחִֽיו

Deut 25:10 וְנִקְרָ֥א שְׁמ֖וֹ בְּיִשְׂרָאֵ֑ל בֵּ֖ית חֲל֥וּץ הַנָּֽעַל׃ ס

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TRANSLATION OF DEUTERONOMY 25:5–10[1]

[5] If brothers are living together [on the same plot of land] and one of them dies, and the man [who died] had no son, [his] wife will not be [permitted to marry] someone outside of the family. Her husband's brother will come upon her, marry her, and impregnate her.

[6] Now the firstborn (son) that she bears [from this union],   [her   husband's brother] will raise up under the name of his dead sibling, so that his dead brother's name will not be expunged from Israel.

[7] However, if this man does not want to marry his brother's wife, [she] will go up to the gate [of the city], to the elders, and say, "My husband's brother has refused to raise up a name in Israel for his sibling. My husband's brother does not want to do it."

[8] Then the elders of the city will call [the brother of the dead man] and speak to him, but if he stands [there] and says, "I am not happy [at the thought of] marrying her,"

[9] then his brother's wife will approach him, in front of the elders, take his shoe from his foot, spit in his face, and proclaim, "This is what is done to [any] man who will not build up the house of his brother."

[10] Then [from that time forth] the name of the family [of the dead man's brother] will be known [throughout Israel] as *ḥălûṣ han-nāʕal*.

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[1]Translation by the author.

In this report I have chosen to look at the rite of *ḥălîṣāh*,[2] as presented in Deut 25:5–10, through a sociological framework. Admittedly, such a framework may appear, at first blush, to be at odds with the explanation offered by the author of our verses. After all, Deut 25:6, 7, and 9 seem to argue that the rite of *ḥălîṣāh* had the exclusive function of insuring that the "legacy"[3] of a childless man, who had recently died, came at a high cost to those who survived him; in other words, the rite described in Deut 25:7–10 could potentially be taken to advocate that the needs of the few were to be placed above the needs of the many. It should be noted, however, that according to current anthropological theory, ritual is a social act; that is, it is not intended to protect the needs of the few, it is intended to protect the needs of the many.

I will argue, then, following current anthropological theory, that there is strong evidence to suggest that the rite of *ḥălîṣāh* was a form of "institutional policing,"[4] intended to act as a bulwark against the potential for infiltration of tribal land through exogamy. In order to demonstrate the viability of my claim, I will also be using data from the Mishnah, for the simple reason that there are no other clear[5] examples of this

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[2]I have adopted the Mishnaic terminology for the rite found in Deut 25:5–10.

[3]This is the *Common English Bible's* translation of the Hebrew term *šēm*.

[4]See Joseph Bulbulia and Marcus Frean, "Religion as Superorganism: On David Sloan Wilson, *Darwin's Cathedral* (2002)," in *Contemporary Theories of Religion: A Critical Companion* (ed. Michael Stausberg; New York: Routledge, 2009), pp. 173–194. See especially 182.

[5]For a summary of the debate on whether Ruth 4:3–11 should be considered a rite of *ḥălîṣāh*, see Paul A. Kruger, "The Removal of the Sandal in Deuteronomy XXV 9: "A Rite of Passage"?" *VT* XLVI / 4 (1996): 534–9. See particularly 535.

rite in the Hebrew Bible. It may be objected by some that using texts separated by such large gaps in time (7th century BCE–1st century CE) is foolhardy, especially given the major upheavals that occurred between the pre-exilic and post-exilic periods. While I agree that change is inevitable in all aspects of society, I also recognize, as have evolutionary biologists before me, that "religious culture [is] surprisingly resistant to evolutionary change."[6]

Having made that caveat, my report will proceed as follows: I will first note the problems that have surrounded interpretation of Deut 25:5–10 in previous research. Next, I will briefly summarize the relevant arguments of contemporary theorists of ritual as a potential solution for our passage. Third, I will analyze those arguments with respect to the relevant biblical and Mishnaic passages. Fourth, after summarizing my arguments, I will offer some suggestions for further avenues of research.

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[6]Bulbulia, "Religion," 183.

Chapter 2: Previous Research

Paul Kruger[7] has observed that when it comes to the significance of the rite in Deut 25:5–10, four major theories have been proposed by biblical scholars over the years. The first theory, according to Kruger, is best summarized by A. Knobel: "'Das Ausziehen des Schuhes bedeutet ... Verzicht auf ein Bezitsrecht [*sic!*].'"[8] Kruger criticizes this view because it assumes that the *ḥălîṣāh* of Deut 25:5–10 is the same as the one mentioned in Ruth 4:6–8.[9] Comparison of these two passages, however, is problematic since they employ different verbs to describe the act (*ḥālaṣ* in Deuteronomy; *šālap* in Ruth) and different figures to remove the shoe (the *yəbāmāh* in Deuteronomy; the *yābām* in Ruth).[10] I will argue in my conclusion, however, that this warrants further research.

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[7]Kruger, "Removal," 535–6.

[8]Ibid., 535. I translate this quote as: "The drawing off of the shoe indicates ... relinquishment of a property right."

[9]The earliest commentator, of which I am aware, to make the connection between the two pericopes was Josephus: "[...] so Booz called the senate to witness, and bid the woman [Ruth] to loose his [the nearer kinsman's] shoe and spit in his face, according to the law; and when this was done Booz married Ruth, and they had a son within a year's time (William Whiston, *Josephus Complete Works* (Grand Rapids, MI: Kregel Publications, 1974), 121)."

[10]See further Philip J. King and Lawrence E. Stager, *Life in Biblical Israel* (Louisville and London: Westminster John Knox Press, 2001), 273, and Helmer Rjnggren, "נַעַל, naꜥal" in *Theological Dictionary of the Old Testament* (15 vols; G. Johannes Botterweck, Helmer Ringgren, and Heinz-Josef Fabry, eds.; David E. Green, trans.; Grand Rapids, Michigan and Cambridge: Wm. B. Eerdmans Publishing Company, 1998), ix, pp. 465–7, especially 467, who each hold a similar view.

The second theory suggests that the *ḥălîṣāh* is a form of humiliation.[11] While Kruger acknowledges that the act of spitting mentioned in Deut 25:9 is clearly intended to humiliate the defaulting party, he is not convinced that the *ḥălîṣāh* is intended for the same purpose; in other words, for Kruger, association of the two acts within the same rite is not sufficient evidence to support a common purpose.[12] No discussion is offered, however, of passages such as Isa 20:2–5, where the removal (Heb. *ḥlṣ*) of a shoe in 20:2 (*wə-naʕal-ḵā taḥălōṣ mē-ʕal ragley-ḵā*) is explicitly described as an act of humiliation and shame (*wə-ḥattû wā-ḇōšû*) in 20:5.[13]

The third theory mentioned by Kruger is that of C. M. Carmichael. Carmichael theorized that Deut 25:5–10 was intended as an allusion to Gen 38:8–9, the refusal of Onan to engage in levirate marriage through an act of *coitus interruptus*.[14] Thus, for Carmichael, the symbolic nature of the *ḥălîṣāh* consisted of a shoe representing the pudenda of the dead man's wife, a foot representing the phallus of the dead man's brother,

[11]Kruger, "Removal," 535–6.

[12]Ibid.

[13]Consider also 2 Sam 10:2a–5 and Ezek 24:16–7. See further Harry A. Hoffner, Jr., "Some Contributions of Hittitology to Old Testament Studies," *Tyndale Bulletin* (1968), 27–55, particularly 44, where he notes the following protocol for the Hittite royal guard: "'If a guard deserts (his post) and carries off a lance from the postern, and the gateman catches him in the sin, he (the gateman) shall remove his (the guard's) shoe *(IBoT* I 36 i 53-54).'" Hoffner notes that like Deut 25:5–10, four major themes are evident here: "(1) The guard has been remiss in the performance of his duty; (2) one of his shoes is removed by the man who apprehended him in the flight from duty; (3) the gateman thus acts as a witness against him; (4) the action constitutes a public stigmatization." Although Kruger cites Hoffner in his fn. 8, he fails to engage the argument.

[14]Kruger, "Removal," 536.

and the spittle representing wasted semen.[15] Kruger coyly demurs that there is no

evidence of a woman's pudenda ever being represented by a shoe or sandal in the HB.[16]

No mention is made of the fact that the gender roles would be reversed in the rite of

ḥălîṣāh as opposed to Onan's actions in Genesis 38.

The final theory mentioned by Kruger is that of D. A. Leggett. Of particular

interest for Kruger is Leggett's contention that:

> [...] the intention of the [rite of *ḥălîṣāh* was] primarily to protect the widow [...].
> [I]f the widow waited a reasonable period without any sign that the brother-in-law
> was disposed to perform his duty toward her, she might, as a final measure, seek
> to be free from his authority and to either return to her own father or make her
> own way. *This ceremony would then constitute a kind of release similar to the
> bill of divorcement*.[17]

While Kruger praises Leggett's intuition here, he argues that, "he could have reached such

a conclusion in a much more convincing fashion if he approached the matter from an

anthropological perspective."[18]   While I am less inclined to agree with Kruger on a

number of critiques noted above, his proposal here is suggestive and one which I shall

develop further in this report. Before doing so, though, it would serve us well to first

examine Kruger's suggested reading of Deut 25:5–10.

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[15]Ibid.

[16]Ibid. Kruger relies solely on a quote from A. Phillips to support this contention.

[17]D. A. Leggett as qtd. in Kruger, "Removal," 536. Emphasis belongs to Kruger.

[18]Ibid.

Following a theory first put forward by Arnold van Gennep in 1908,[19] Kruger has proposed that Deut 25:5–10 is a rite of passage.[20] More specifically, Kruger is of the opinion that, like divorce, the rite of *ḥălîṣāh* ought to be seen as a solution for a "'life [crisis],'" through which the individual in crisis was allowed to "'pass from one defined position to another [...].'"[21] According to Kruger, though, the rite of *ḥălîṣāh* was not so much meant as a transition from being married to the dead, as it was from being married to the living.[22] That is because, according to Kruger, the wife of the deceased "automatically [became] the lawful wife of [her] brother-in-law [...]" at the moment of her husband's death.[23]

In response to Kruger's claims, let me begin by stating that I also recognize the *ḥălîṣāh* as a rite of passage. Where Kruger and I disagree is regarding his claim that Deut 25:5–10 "should be viewed from the widow's [...] perspective [...]."[24] Furthermore, I reject Leggett's theory that the rite was meant for the widow's protection. The reason for

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[19]For an English translation, see Arnold van Gennep, *The Rites of Passage* (Chicago: The University of Chicago Press, 1960), 144, fn. 1: "The following rite practiced among Orthodox Jews may be considered a rite of passage [i.e. Deut 25:5–10]. [...] It is clearly a matter of separation from the husband's family, and the rite is intended to assure the passage into a category of either free widow or remarried woman."

[20]Kruger, "Removal," 536.

[21]van Gennep as qtd. in Kruger, "Removal," 536.

[22]Kruger, "Removal," 537.

[23]Ibid.

[24]Ibid., 535.

my disagreement with Kruger and Leggett on these points will become clearer once we have reviewed a number of contemporary theories on ritual below, but suffice it to say that if Kruger or Leggett were correct in their assertions, the function of the *ḥălîṣāh* as a means of protecting the interests of the few above the interests of the many would be unique among the cultures of the world.

Chapter 3: Contemporary Theories of Ritual

In 1979, Roy Rappaport commented that as he understood it, ritual was "'*the* basic social act.'"[25]   While no modern theorist would disagree with Rappaport based on his definition alone, all have asked the question, "To what end?" Perhaps the best synopsis of the ongoing debate on the function of ritual is that of Catherine Bell. Bell notes that since the seminal work of Emile Durkheim was first published in 1915,[26] four major theories have arisen to explain ritual's function.[27]

The first of the theories that Bell treats is the social solidarity thesis. Like Durkheim, who "saw ritual as dramatizing collective representations [...]," the social solidarity theory argues that ritual's function is to promote consensus among the members of the community through "psychological and cognitive [...]" conditioning; [28] one might imagine something like shaping an entire community into the proverbial Pavlovian dog. Such an understanding, though, has been criticized for being much too simplistic to account for phenomena such as the negotiations that occur between individuals and their

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[25]Roy A. Rappaport as qtd. in Catherine Bell, *Ritual Theory*, *Ritual Practice* (New York and Oxford: Oxford University Press, 1992), 54. Emphasis belongs to Rappaport.

[26]For an English translation, see Emile Durkheim, *The Elementary Forms of the Religious Life* (Trans. Robert Nisbet; London: George Allen & Unwin LTD, 1976).

[27]Bell, *Ritual Theory*, 171.

[28]Ibid.

society, eventually resulting in social change. Thus, others have modified the social solidarity thesis to suggest that ritual functions as a form of control for the dominant echelons of society.[29]

Following on the heels of the latter theory, Bell next outlines the channeling of conflict thesis. This theory views ritual as a "safety valve" that manages the inevitability of conflict in a stratified community through socially approved forms of catharsis.[30] Perhaps the best-known theorist to ascribe to this theory is Victor Turner. In Turner's description, the cathartic experience comes in the form of *communitas* forged through a period of liminality, which he terms anti-structure.[31] According to Turner, then, it is through the "dialectic of structure and anti-structure" that ritual "'periodically converts the obligatory into the desirable.'"[32] Thus, unlike the social solidarity thesis, the channeling of conflict thesis more fully addresses "how ritual integrates the social and the individual [...]" in order to insure communal equilibrium.[33]

The third theory described by Bell is the repression thesis. Based largely on the works of René Girard and Walter Burkert, who argue that ritual is a means of controlling unconscious urges towards violence, this theory has largely been dismissed by

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[29]Ibid., 172.

[30]Ibid.

[31]Ibid.

[32]Ibid.

[33]Ibid., 172–3.

contemporary theorists of ritual for the simple reason that it stresses a "psychological process independent of culture."[34] More plainly stated, the repression thesis argues that the individual psyche is the source of conflict necessitating resolution through ritual. This, of course, is problematic since it assumes that ritual's function is aimed at catering to the needs of the individual, rather than protecting the concerns of the community.

The fourth theory to be summarized by Bell is the definition of reality thesis. Supported by theorists such as Clifford Geertz and Mary Douglas, this thesis suggests that social control is more subtle than the previous theories have allowed.[35] This is because in the definition of reality thesis, control comes in the form "of assumptions about the way things are and should be."[36] In other words, it is "the invisibility of ritual in naturalizing assumptions about the nature of reality [...]" that makes it so effective.[37] One of the problems with this thesis, which has been aptly noted, is that it assumes ritual contributes far more to a society's conceptions of reality than it actually does.[38]

Aware of this critique, Mary Douglas has modified the definition of reality thesis to account for other factors that might shape a society's conception of reality.[39] To

[34]Ibid., 174.

[35]Ibid., 175.

[36]Ibid., 176.

[37]Ibid.

[38]Ibid.

[39]Ibid., 178.

explain how these factors interact with one another, Douglas developed typologies to account for variety in the anthropological data.[40] In doing so, she saw a clear distinction between societies moving toward secularization and societies that were not.[41] Among the typological societies that Douglas argued were most susceptible to the use of ritual in shaping their reality were those "primitive" societies that contained a marked hierarchy and defined tribal borders.[42] More specifically, Douglas argued that:

> Primitive society is an energized structure in the center of its universe. Powers shoot out from its strong points, powers to prosper and dangerous powers to retaliate against attack. But the society does not exist in a neutral, uncharged vacuum. It is subject to external pressures; that which is not with it, part of it and subject to its laws, is potentially against it. [...I]deas about separating, purifying, demarcating and punishing transgressions have as their main function to impose system on an inherently untidy experience. It is only by exaggerating the difference between within and without, about and below, male and female, with and against, that a semblance of order is created.[43]

In other words, according to Douglas, any entity that did not conform to a "primitive" society's conception of social hierarchy and order—i.e. its reality—was to be viewed as a threat and should therefore be controlled, marginalized, deterred, or potentially destroyed.[44] While Bell is complimentary of Douglas's position, she has argued that it

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[40]Ibid., 177–8.

[41]Ibid., 178.

[42]Ibid.

[43]Mary Douglas, *Purity and Danger: An Analysis of the Concepts of Pollution and Taboo* (London and New York: Routledge, 2002), 4. See further I. M. Lewis, *Ecstatic Religion: A Study of Shamanism and Spirit Possession* (3rd ed.; London and New York: Routledge, 2003), xv–xvii.

[44]Compare Lev 20:10.

still fails to account for other important functions of ritual, most notably its role in social change. To account for that function, Bell has suggested that ritual practices should be viewed as a "negotiation of power relations" in addition to other functions noted by Turner and Douglas above.[45] Theories of evolutionary biology would seem to agree with Bell's contention.

David Sloan Wilson, a pioneer in the field of evolutionary biology, was the first to hypothesize that evolutionary processes are active at levels higher than that of the genome.[46] In fact, Wilson has contended that evolutionary processes are actually active as high up the biological ladder as the formation of the human social structure, a theory he has termed the group selectionist model.[47] Adapting Darwin's theory of the survival of the fittest, Wilson has noted that while greater fitness can be acquired in an individual, those traits are destined to become extinct if not used for the benefit of the group.[48] That is because without the group and its ability to facilitate reproduction of the superior genes of an individual, those genes will undoubtedly be lost at the latter's death. Not only so, but it is clear that cooperative groups fair better than the fittest of individuals.[49] Thus, in an age of limited resources, fierce competition would drive the "evolution of effective

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[45]Bell, *Ritual Theory*, 196.

[46]Bulbulia, "Religion," 171.

[47]Ibid., 173. While Wilson was ridiculed for his theory, at first, it is now the consensus among evolutionary biologists.

[48]Ibid., 175.

[49]Ibid., 176.

groups without requiring that genetic adaptations do all the work."[50]

Be that as it may, Wilson notes a dilemma in the evolutionary process of social formation: individual members of a society are only willing to participate in a cooperative society as long as the benefits outweigh the costs.[51] Thus, without any sort of mechanism to insure altruistic allegiance to the community in times of desperation, societies would inevitably dissolve.[52] Wilson surmises that it was at this critical juncture in the development of cooperative societies that ritual assumed the role of a social policing mechanism aimed at protecting against defection and social collapse.[53] Joseph Bulbulia and Marcus Frean, however, have questioned Wilson on the latter issue, arguing that such a mechanism was sufficiently filled by religious ideology.[54]

Alternatively, Wilson and Bell have argued that religious ideology serves as the medium through which social dialogue is facilitated in the negotiation of power relations—i.e. ritual. [55] In other words, religious ideology is not, in and of itself, a

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[50]Ibid., 177.

[51]Ibid., 180.

[52]Ibid.

[53]Ibid., 181.

[54]Ibid. They state, "We think Wilson underestimates the efficiency and power of religious belief in preventing outlaws."

[55]See, ibid.,181, where Bulbulia and Frean quote Wilson, "No matter how powerful, a belief system by itself is probably insufficient to turn a group into a societal organism. A social organization is also required to enforce [norms] ... all adaptive units, including individual organisms, require mechanisms to prevent subversion from within."

policing mechanism. In fact, it is not a policing mechanism at all; rather, it is the means through which ritual—the true policing mechanism of "primitive" society—is accomplished. Put another way, according to Wilson and Bell, religious ideology is the veneer that covers the unpleasant reality of preserving social cohesion.

Religious ideology also provides a context and a platform for the concerns of the individual to be heard and expressed. Ritual, though, subsequently manipulates and brings individualistic concerns into conformity with the prevailing social ideals. In the end, then, Wilson and Bell seem to advocate that the function of religious ideology is very similar to what Victor Turner has argued for in discussing the role of *communitas* in the liminal echelons of society. Meant to give individuals an outlet for their concerns and a sense of camaraderie that was previously lacking, the *communitas* is reintegrated into mainstream society only after adopting the latter's views.[56]

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[56]Victor Turner, *The Ritual Process: Structure and Anti-structure* (Chicago: Aldine Pub. Co., 1969), 94–113, 125–30.

Chapter 4: Data and Analysis

While most biblical scholars recognize that Deut 25:5–10 was meant to act as a deterrent for a defaulting levir, they have failed to recognize its overarching social function. Ironically, Deut 25:5 establishes the setting of the ritual within the context of an endogamous tribe,[57] or social setting.[58] Yet none of the studies of which I am aware have noted this critical detail. In fact, it may be that the usual arguments for the custom of levirate marriage as a protection for the widow stem from this oversight. In any case, the significance of our passage has been missed, as well as a number of other critical factors that point to the social nature of the *ḥălîṣāh*.

Foremost among these factors is the fact that Israelite women were able to inherit landed property. Consider Num 27:1–8. There the daughters of Zelophehad stand before the entire community and declare that they alone are left to acquire the inheritance of their father, who had died without siring any sons. They ask that the property that was their father's be allotted to them, so that his legacy might not be lost (compare Deut 25:6). After consulting with YHWH, Moses declares that the land should be awarded to Zelophehad's daughters and that, should a similar situation arise in the future, the

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[57]"When brothers are living together [on shared property], [...]."

[58]See also Lev 20:21, Deut 20:7; Deut 22:30; Deut 24:4; 1 Chr 23:22; Ezra 9:12; Jer 3:1; Ezek 44:22.

property of the deceased should be given to the "nearest [living] *relative* (Num 27:11),"

regardless of sex.

In a related passage, Num 36:1–12, the elders of the tribe of Manasseh come

before the community and express concern that if the aforementioned daughters of

Zelophehad were to marry outside of the clan, the inheritance allotted to them would

eventually be lost to the tribe. In response to this, Moses concedes that the daughters of

Zelophehad are to marry within the clan. He further declares that should a similar

situation arise in which a woman might stand to inherit inalienable property, she too

should remain endogamous. Ultimately, then, these two passages demonstrate that while

ancient Israelite mores allowed for justice in favor of individualistic concerns, there was

also a great deal of trepidation that in seeking to protect the rights of individuals, the

needs of the community could be jeopardized.

Similar concerns are demonstrable with regard to the *yəbāmāh*, at least, that is, if

she were a true widow.[59] Consider, for instance, that Paula Hiebert has argued that a

widow did not in fact return to the authority of her biological father, as Leggett has

suggested,[60] nor did she automatically become the wife of her brother-in-law, as Kruger

has argued. In fact, Hiebert has shown, based on comparative anthropological data, that

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[59]Paula Hiebert, "'Whence Shall Help Come to Me?': The Biblical Widow," in *Gender and Difference in Ancient Israel* (ed. Peggy L. Day; Minneapolis, MN: Augsburg Books, 2000), 125–41. See especially 128, where Hiebert argues that a widow, in the ANE sense of the word, was a woman whose husband and father-in-law had died, and who had no sons.

[60]Cf. Gen 38.

it is more likely that until she remarried, the wife of the deceased ('ēššet-hammēt) remained married to her dead husband.[61]

Thus, in a case in which a woman's husband had died without siring sons, and in which her father-in-law was also deceased, a woman could become the closest living relative of her dead husband, even if that woman's husband had living brothers or other "next-of-kin."[62] In fact, following Hiebert, if we look closely at the Masoretic text of Ruth 4:5, *pəlōnî-ʾalmōnî* is told to buy the field that once belonged to Elimelech from Naomi *and* from Ruth. Since Elimelech would have left an inheritance for Mahlon and Chilion upon his death, it appears as though Ruth may have inherited Mahlon's allotment and that Naomi retained the remainder.[63]

The Mishnah likewise appears to support this possibility. In Yebam 4:3 A–B, it is stated:

> A woman awaiting levirate marriage who received property–the House of Shammai and the House of Hillel concur that she sells or gives away the property [which she has received], and the transaction is confirmed.[64]

Not only so, but we read in Yebam 4:7 A–D that:

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[61]Hiebert, "Whence," 129.

[62]Ibid., 136. Hiebert admits that while it would have been relatively rare for a woman to become the closest living relative of her dead husband and therefore to inherit his landed property, it was by no means impossible for such a situation to occur.

[63]I would assume that Naomi also inherited Chilion's property, since Orpah did not return with her to Bethlehem.

[64]The translation belongs to Jacob Neusner, *The Mishnah: A New Translation* (New Haven, CT: Yale University Press), 1988. Accordance e-book.

He who undergoes a rite of *ḥălîṣāh* with his deceased childless brother's widow, lo, he is deemed as one with the brothers for inheritance [of the deceased brother's estate]—And if there is a father [of the deceased brother] there [to share in the inheritance], the property reverts to the father. *He who marries his deceased childless brother's widow acquires the estate of his brother.*[65]

Thus, taken together, Yebam 4:3 A–B and Yebam 4:7 A–D[66] strongly support the contention that a woman could take control of her dead husband's property, but once she was acquired in marriage all claims to that property were transferred to her new husband.

Given what is described in Gen 38, Ruth 4:6, and Yebam 4:5–6,[67] though, it appears that a *yābām* was not always keen in taking on the extra responsibility of his brother's wife. Whether such a feeling was actually prevalent or not, we know that should such a situation arise in which none of the male relatives of the dead man's family were willing to take on the responsibility of an additional wife, a genuine concern for the

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[65]Ibid. The emphasis is mine.

[66]Compare also Ruth 4:5:

וַיֹּ֣אמֶר בֹּ֗עַז בְּיוֹם־קְנוֹתְךָ֧ הַשָּׂדֶ֛ה מִיַּ֥ד נָעֳמִ֖י וּ֠מֵאֵת ר֣וּת הַמּוֹאֲבִיָּ֗ה אֵֽשֶׁת־הַמֵּת֙ קָנִ֔יתִי לְהָקִ֥ים שֵׁם־הַמֵּ֖ת עַל־נַחֲלָתֽוֹ׃

[67]Neusner's, *The Mishnah*, translation of Yebam. 4:5–6 is as follows:

It is the duty of the oldest surviving brother to enter into levirate marriage. [If] he did not want to do so, they pass in turn to all the other brothers. [If] they [all] did not want to do so, they go back to the oldest and say to him, "Yours is the duty! Either undergo the rite of halisah or enter into levirate marriage." [If the levir proposed to] suspend [his decision, waiting] for a youngster to grow up, or for an adult to come from overseas, or for a deaf-mute or an idiot [to recover sound or sense], they do not listen to him. But they say to him: "Yours is the duty. Either undergo the rite of halisah or enter into levirate marriage."

loss of tribal land became imminent. That is, if the widow were to marry outside of the clan, the land that she had inherited from her dead husband would be acquired by an outsider and eventually lost to the tribal unit, as noted in Num 36:1–12. Granted, one could argue that the function of Num 36:1–12 was to eliminate a widow's ability to marry outside of the clan, but it is worth pointing out here that there were no sanctions specified against such an act anywhere in the Hebrew Bible. Thus, as Wilson is quick to point out (see my fn. 54), without sanctions, there is nothing to stop an individual from becoming subversive within its society.

Based on Wilson's theories, though, it would seem that the rite of *ḥălîṣāh* may have acted as just such a sanction in order to prevent the dissolution of inalienable land (e.g. 1 Kgs 21:2–3). More specifically, if the levir should default, he would be both publicly humiliated and pass from a temporary liminal state, as levir, to a permanent member of the periphery. Not only so, but it is clear that his children would also have become peripheral figures as well. Still, the fact that the rite was meant to act as a deterrent for a defaulting levir has already been argued, though for different reasons than what I have proposed.

What about the widow? Is there any sense that she was policed through the rite of *ḥălîṣāh*? Based on Yebam 16:2 J–K,[68] it might appear that in some circles, there was nothing that prevented a woman from marrying outside the clan when faced with this

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[68]Cf. Yebam 1:3 B and 16:1 A. Compare Git 9:3 C.

situation. As I have already indicated, though, this would have become a heavy liability to any clan or social group seeking to maintain its cohesion.

Ironically, I think, Paul Kruger has provided the key to understanding how the widow was sanctioned along with her *yābām*; that is, following van Gennep, Kruger has proposed that the *ḥălîṣāh* was a rite of passage. A handful of passages in the Mishnah would agree, since they refer to a woman who has performed the rite of *ḥălîṣāh* as a *ḥălûṣāh*—a social status distinct from any other. Even more intriguing, though, is the fact that the status of the *ḥălûṣāh* was understood to be both peripheral and ritually impure. Consider Ter. 8:1 E–F, I–J, L:

> [...] and so [in the case of] a priest who was eating heave offering, and it became known that he is the son of a divorcée, or of a halusah [a woman who has undergone the rite of removing the shoe (Dt. 25:10)] [...] may not eat heave offering] [...].

> [If a priest] was standing and offering sacrifices at the altar, and it became known that he is the son of a divorcée or of a halusah—R. Eliezer says, "All of the sacrifices which he had [ever] offered on the altar are invalid [...]."

> If it became known that he is blemished—his service [retroactively] is invalid.[69]

It would seem, then, that like her male counterpart, the *yəbāmāh* would pass from a temporary liminal state (*yəbāmāh*), to a state of perpetual impurity and social exile (*ḥălûṣāh*) if she performed the rite. Similarly, Ter. 8:1 E–F, I–J, L suggest that should such a *ḥălûṣāh* choose to marry outside her clan after performing *ḥălîṣāh*, her children would likewise be assigned a peripheral and impure status. Given the latter, one might wonder if a woman in this situation may have wished to remain unattached.

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[69]Neusner, *Mishnah*. See also Yebam 6:2 C, 6:4 I, and Ed 4:8 XV.

Hiebert has answered unequivocally in the negative. For the ancient widow there was a genuine fear that individuals might seek to take advantage of her situation by stealing property, raping, or even murdering her. These must have been perpetual concerns throughout the biblical period, and not just during the period of judges, as the mistreatment of the widow is a frequent theme throughout the length of the Hebrew Bible. More particularly, we read that Israelites were often remiss to care for the widow's needs or to provide her with justice. Ultimately, then, it would seem that the sanctions imposed upon a defaulting levir *and* the *ḥălûṣāh* were severe enough to warrant serious reflection before proceeding with the rite.

With that duly noted, I wish to treat one final issue that ought to be addressed in light of Bell's arguments about ritual: the role of the dead man's legacy in the rite of *ḥălîṣāh*. Based on both Bell's and Wilson's theories, the ideology of preserving a dead man's legacy should be understood as the dialogue that facilitated the negotiation of power relations between members of the Israelite community, the *yābām*, and the widow. To argue alternatively, as Joseph Bulbulia and Marcus Frean have done, that the legacy of the dead man was sufficient to police the community, discounts Deut 25 and an entire tractate of the Mishnah.

While it is true that the ideology of preserving a dead man's legacy formed a sort of *communitas* for the widow and her *yābām*, it alone would not have been able to keep the respective parties from defaulting. Instead, through *threat* of ritual, both the widow and the *yābām* were made to fear becoming social outcasts and marring the hope of a bright future for their children. On the other hand, the possibility of performing the ritual

gave both *yəbāmāh* and the *yā<u>b</u>ām* a sense that they were able to negotiate power relations with the community if necessary. In fact, I would argue that the role of the elders speaking to the reluctant *yā<u>b</u>ām* in Deut 25:8 was likely in an effort to manipulate him into accepting the social ideals of the community as his own. If he were convinced by their arguments, both he and the widow could be reintegrated back into the community through their union.

That this process was not always effective for the community must be assumed. In fact, there are a few clear examples in the Mishnah through which we know that the rite of *ḥălîṣāh* took place. This may suggest that changing social conditions, such as the upheaval of the tribal system following the exilic period, may have shifted communal needs and, consequently, the role of the rite within that community. This, of course, would be problematic for those like Kruger and Leggett who argue that the whole point of the rite was to protect the widow.

To be fair, though, one must also ask whether such changes violate what evolutionary biologists have suggested about the peculiar inclination of religious culture towards conservatism. I would respond that if the rite were about individualistic concerns, then the answer would be affirmative. If, however, as I have argued, the ritual was about protecting communal interests, then the answer is undeniably negative. Consider that in the Mishnah the *ḥălûṣāh* is described as a source of impurity for the priestly class, while in the Hebrew Bible no mention of the priestly class is made in this respect. I would argue that this distinction came about due to changing communal needs and a renegotiation of power relations between that community and its members. That is,

in the pre-exilic period, while inalienable tribal land functioned as a major ethnic marker, in the post-exilic period, such a notion would have become obsolete.[70] Instead, major tracts of inalienable property were divided among various "houses," including members of the priestly class.[71]

This might explain passages like Yebam 16:2 J–K (see fn. 68), where women who had performed the *ḥălîṣāh* were permitted to marry anyone of their choosing, including men outside the clan, as long as they had not inherited property belonging to members of the priestly class. Furthermore, such a suggestion seems to coincide with Douglas's argument that societies moving away from tribal culture are less inclined to engage in the use of ritual to control its members (see fns. 41–42). Thus, while the rite of *ḥălîṣāh* likely retained its function of protecting inalienable property, its scope may have narrowed to the priestly class.

In the end, then, we must conclude the individualistic concerns of the *yābām* and *yəbāmāh* were able to be negotiated within the community so as to allow for default outside of the priestly class, but not within it. While this suggestion is somewhat tenuous and requires further research, it does conform to Bell's suggestions about social change, while still maintaining what evolutionary biologists have noted about religious culture's conservatism.

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[70]See John Sietze Bergsma, *The Jubilee from Leviticus to Qumran: A History of Interpretation* (Supplements to *Vetus Testamentum* 115; Leiden: Brill, 2007), 116–118.

[71]Ibid., 159 (fn. 29). See further Ezek 45 and 48.

Chapter 5: Conclusion

In this report, I have argued that the rite of *ḥălîṣāh* should be seen to have an overarching social function. Using the religious ideology of a dead man's legacy as a medium to facilitate power negotiations between the community, the widow, and the *yābām*, the threat of the rite of *ḥălîṣāh* sought to insure that inherited land stayed within the tribe. I have also suggested that, in later periods, the rite may have narrowed its scope to preventing the dissolution of inalienable land among the priestly class.

For further research, I would suggest that Ruth 4 be reevaluated as another potential example of the rite of *ḥălîṣāh*. It is possible that the difference in verbs can be explained through the use of a Late Hebrew gloss in Ruth. To indicate as much, an intensive study of the semantic field of putting on and taking off shoes would need to be conducted. In addition, the fact that the *yābām* removed his shoe in Ruth 4, rather than the *yəbāmāh*, may not be as problematic as previously supposed, especially since, as has been argued recently by Pierre Bourdieu, rituals are not entirely fixed. Not only so, but if, indeed, the book of Ruth is Late Biblical Hebrew, the rite presented there could indicate a transitional period in the development of the rite from the biblical period to the Mishnaic era. For that reason, additional research into the Mishnah and Talmud in order to trace development of the rite further into the Common Era might also be warranted.

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