

Hilary Lipka – Bruce Wells (eds.), *Sexuality and Law in the Torah* (Library of Hebrew Bible/Old Testament Studies 675; London: Clark 2020). Pp. 344. £85 (HB); £76,50 (ePDF). ISBN 978-0-5676-8159-1 (HB); 978-0-5676-8160-7 (ePDF)

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This volume has its origins in a session of the Biblical Law at the 2014 meeting of the Society of Biblical Literature in San Diego, California. Expanded versions of four of the five papers presented there are included in the volume; eight additional scholars have contributed papers as well. The book therefore consists of an Introduction and 12 articles. This is complemented by index of biblical and extra-biblical references as well as index of authors.

In the Introduction the Editors state that every human society regulates sexual behavior, and every society appears to have implemented such regulation through norms and expectations, that is, through law. They note that “any analysis of the relationship between sexuality and law, especially within an ancient society, faces a complex set of challenges” (p. 1). Not only is this relationship difficult to delineate, but each area also presents a variety of dimensions that deserve their own detailed exploration.

Then we have comments on the nature of sexuality. The Editors note that “sexuality encompasses both the ways in which we experience our bodies, pleasures, and desires, and how we interpret and make sense of those experiences. What we see as being natural or unnatural, appropriate or inappropriate, and moral or immoral about particular sexual acts, behaviors, and choices in sexual partner – and even which feelings, acts, and behaviors we consider to be sexual – is shaped by the society and culture in which we live” (p. 2). In their opinion, because sexual norms can vary a great deal from society to society, there is little in the way of sexual behaviors or attitudes that may be considered universal. What is sexually normative in one culture or sub-culture can have little in common with what is considered sexually normative in another (p. 3).

They point out that “the ideas of the biblical authors concerning what behaviors they considered sexual and how they viewed these behaviors not only differ from our own ideas about what is normative, but also, as will become evi-

dent from the essays in this book, exhibit differences among themselves” (p. 4). And that’s why they prefer to talk about “sexualities” in the Hebrew Bible rather than one “sexuality.”

The next comments concern the nature of biblical law: what is the relationship between biblical law and actual legal practice in ancient Israel and Judah. Is the legal material of the Pentateuch a comprehensive system of law that was supposed to be followed and enforced? Or, are these legal collections theoretical production of scribal schools, created perhaps in the hope of influencing societal behavior, but having little or no connection to actual legal practice at the time they were written? (p. 6–8). According to the editors, the relationship between biblical law and ancient Israel was complex, multi-faceted, and both possibilities worked at the same time (p. 9–10).

In the first essay – “Categories of Sexuality Indigenous to Biblical Legal Materials” (pp. 20–47) – David Tabb Stewart, Professor of Ancient Near Eastern Religions at California State University, raises central problem of categorization when discussing “sexuality” in the Bible. He analyzes Israelite and Hittite legal texts, with some comparands from other genres and from elsewhere in the ancient Near East, and suggests that fine-grained regulation of sexual behaviors did not arise only in the twentieth century, and that different ways to organize “sexuality” already existed. The sexual landscape in ancient Israel shows that some things are strictly forbidden (adultery, incest, sex with animals and heavenly beings, and menstrual sex), some things are commanded (reproductive sex), some things fall in-between: not strictly outlawed but viewed negatively, or valued but not commanded; finally some things are neutral, neither rejected nor recommended. David Tabb Stewart examines in detail five forbidden sexual behaviors in Leviticus 18–20: menstrual sex, Molekh sex, male-male incest, male-initiated bestiality, and female-initiated bestiality – in the context of Hittite law. He shows that Hittite law, while showing many similarities with biblical law (in the crimes presented, penalties, recognition of animal agency, use of diagnostic terminology, and concern for pollution), has several significant differences. The range of behaviors controlled is more limited in Hittite laws. Israel and Hatti-land shared an answer to the question: What sexual behaviors destabilize society? Adultery, rape, unregulated sex between some degrees of familial relation, and sex with someone with contagious pollution.

In the second essay – “The Daughter Sold into Slavery and Marriage” (pp. 48–76) – Pamela Barmash, Professor of Hebrew Bible at Washington University in St. Louis, takes up the case of the daughter sold into slavery in the Book of the Covenant in the context of marriage. Sale into slavery is always a tragedy befalling an Israelite family that has fallen into severe financial straits. Her family’s economic vulnerability prevents her from entering into marriage in the usual manner, and the statute in the Book of the Covenant aims at safeguarding her.

The statute in the Book of the Covenant aims at protecting the daughter with a number of provisos, but the Deuteronomic revamping of the slave laws pursues another path in the amelioration of slavery.

In the third essay – “Rachel’s Betrothal Contract and the Origins of Contract Law” (p. 77–110) – F. Rachel Magdalene, a former lawyer and retired biblical scholar, examines the betrothal contract between Laban and Jacob for Rachel recorded in the biblical text (Gen 29:14-30). She maintains that within this literary unit stands a contract narrative that reflects an extensive process of contract development and maturation. At the center of this narrative lies an oral, informal contract that relies for its legal effect, not upon formal execution language or rites, but instead upon the exchange of legally valid consideration, much in the way that such modern contracts operate. There is to be found within the book of Genesis a genre that should be distinguished from other types of known contract chronicles.

Rachel Magdalene argues that we must rethink outdated assumptions regarding the origins of contract law that have colored our thinking about the subject for over 130 years. Legal systems do not necessarily evolve in the way that we have accepted. She maintains, instead, that the legal systems of the ancient world were far more developed than we have previously thought and that we owe a far greater debt to them than we have ever acknowledged. In the case at hand, Rachel Magdalene discovers that Gen 29:14-30 and other texts are examples of an oral, informal contract chronicle. Such a piece of narrative describes with some particularity the formation and terms of an oral contract. This specific contract chronicle is based, not upon formalizing language or rites, or even the presence of witnesses, but, instead, upon an informal contract that is given legal effect due to a meeting of the minds, manifested through an offer and acceptance, to exchange valid and valuable consideration. The traditional theory of contract evolution is thereby undermined.

Eryl W. Davies, an Emeritus Professor at Bangor University (Wales), in an essay entitled: “Judah, Tamar, and the Law of Levirate Marriage” (p. 111–122), takes up the case of Genesis 38 – a story about Judah and Tamar. His discussion focuses on the legal background of the story and especially on its connection with the legislation concerning levirate marriage in Deut 25:5-10. The casuistic law of Deut 25:5-10 states that “when brothers dwell together” and one brother dies childless, the surviving brother should marry the widow to provide the deceased with an heir. There are some similarities as well as differences between this law and the narrative of Genesis 38. The law appears to presuppose that there were only two brothers, one deceased and the other still alive, whereas Genesis 38 envisages a situation in which there are more surviving brothers and implies that the levirate obligation devolved on each of them in turn. Eryl W. Davies states that Deuteronomic law effectively made optional a duty that was once regarded

as compulsory. In the period when the narrative of Ruth was composed, the kinsman could decline his duty without blame (Ruth 4:8-9). Also, at the earliest stage, the levirate obligation devolved not only upon the brothers of the deceased but on his father; the later Deuteronomic law, however, limited the custom to the brothers of the deceased, and it applied to them only if they lived on the unpartitioned family estate.

Bruce Wells, Associate Professor of Middle Eastern Studies at the University of Texas at Austin, in an essay: “On the Beds of a Woman: The Leviticus Texts on Same-Sex Relations Reconsidered” (p. 123–158) takes up the case of law in Lev 18:22 and 20:13 – the prohibition of homosexual relations. He notes that the Hebrew Bible has little to say about homosexuality. Scholars and general readers of the Bible typically identify just two verses (Lev 18:22 and 20:13) as containing explicit prohibitions on same-sex relations. They have been interpreted by most readers as blanket prohibitions on sex between men. While many seem to assume that the meaning of these texts is perfectly clear, they are not without their difficulties. Most importantly, both contain the phrase *משכבי אשה*, a longstanding crux for interpreters. Bruce Wells argues in the paper that, in these verses, the phrase *משכבי אשה* functions as an adverbial accusative of location and should be translated as “on the beds of a woman”. Throughout the essay, he demonstrates that *משכבי אשה* refers to the sexual domain of a woman and to compile a set of arguments that build toward this conclusion.

In the next essay – “The Offense, Its Consequences, and the Meaning of *זנה* in Leviticus 19:29” (pp. 159–179) – Hilary Lipka, an instructor in the Religious Studies Program at the University of New Mexico in Albuquerque, examines the law in Leviticus 19:29 – a warning not to hand over someone’s daughter to sexual immorality (prostitution). Generally, this is understood as a warning to fathers not to desecrate their daughters by making them prostitutes. According to Hilary Lipka, the stem *זנה* denote something else in this context. The basic meaning of *זנה* is “to engage in sexual relations outside of or apart from marriage,” not “to be a prostitute,” and the usage of the stem *זנה* in the context of prostitution is limited to the nominal form *זונה*. In the figurative sense fathers are warned here not to lead their daughters astray by encouraging them to engage in worshipping other gods or other prohibited religious practices. And in the in the literal sense each father is charged with preventing his daughter from engaging in premarital sex.

In the next essay – “Priestly Marriage Restrictions” (pp. 180–193) – Sarah Shectman, scholar and editor living in San Francisco, takes up the case of law in Leviticus 21, that is restrictions and rules related to the behavior of priests. Leviticus 21:7 lists the types of women a regular priest and the high priest, respectively, are allowed to marry: the *הללה*, the *זונה*, and the divorced woman. At a basic level, this women have in common that their past sexual partners are still alive. It is possible that this is what lies behind the prohibition of these three kinds

of women for the priest. Sarah Sheckman suspects however that there is more to it. Not only does the death of the husband not solve the problem of pollution in Deuteronomy 24, but there is also no suggestion that a defiled woman or prostitute would become an acceptable wife if all her former sexual partners were to die. There is some significance to the proper formation and dissolution of sexual connections – that is, the way in which the woman acquired the sexual essence, the context, inside or outside of marriage. What is it about divorce that renders a divorced woman an unfit wife for a priest? According to Sheckman in the ancient Israelite understanding, sexual intercourse left a sort of invisible but real residue of pollution on a woman (a “marking essence”). But neither the divorced woman nor the widow was inherently spoiled as appropriate sexual partner by virtue of the fact that she had been marked by a prior husband’s sexual essence. The difference between a widow (she can marry a priest) and a divorced woman (she cannot marry a priest) is that the divorced woman’s husband is still alive and her primary male bond is therefore not entirely clear.

M.L. Case, the Postdoctoral Fellow in Judaic Studies at Virginia Polytechnic Institute and State University in Blacksburg, in an essay entitled: “The Inheritance Injunction of Numbers 36: Zelophehad’s Daughters and the Intersection of Ancestral Land and Sex Regulation” (p. 194–216), takes up the case of the story in Numbers 36. At the end of the Book of Numbers members of the Manassite tribe, the tribe of Zelophehad and his daughters, complain to Moses and the leaders. They argue that if the daughters marry outside the tribe of Manasseh, the daughters’ land, the land originally allotted for Zelophehad, would be transferred to the tribes of their husbands (Num 36:3-4). Moses gives these women a command: they must marry within Manasseh, in order to keep land from being transferred between tribes.

Because of this attention to the land in both parts of the pericope, most scholars have concluded that the concern the Manassites raise is strictly about maintaining the proper, and divine, allotment of the land. Such a reading, however, ignores another fundamental aspect: the restraint placed upon the daughters’ agency in choosing their own husbands. M.L. Case argues that the daughters threaten the social order of the Israelites due to the combination of their lack of a male head of household (*paterfamilias*) to control their actions and their potential economic independence with the possession of their own land. Daughters as landowners present a threat to the social order of the Israelites. In Numbers 36, the men mitigate this threat. In contrast to scholars who interpret this passage solely about the proper allotment of land, Case argues that the control of the women’s sexuality underlies the Manassites’ complaint in Numbers 36 and Moses’ agreement.

In the next essay – “Reproducing Torah: Human and Divine Sexuality in the Book of Deuteronomy” (pp. 217–238) – Steffan Mathias, a scholar living

in London, takes up the case of sexual laws in Deuteronomy. Deuteronomy produces particular kinds of knowledge of sexuality. Steffan Mathias is trying to read the legal and non-legal material together, and extend the discussion away from simply human sexuality to explore divine sexuality in Deuteronomy. He argues that Deuteronomy constructs YHWH as non-sexual but highly reproductive (a kind of *paterfamilias*), who not only regulates highly reproducing households, but also holds the keys to their fruitfulness. In doing so, Torah becomes a kind of divine seed, ensuring fertility. But YHWH is also depicted as posing the threat of reproductive destruction, which will ensue upon the people's failure to follow the Torah of Deuteronomy. This undoes the promise of blessing and destroys the type of reproducing family units that the legal material requires.

Anselm C. Hagedorn, Professor of Hebrew Bible and Ancient Judaism at the Universität Osnabrück in Germany, in an essay "Divorce in Archaic Crete: Comparative Perspectives on Deuteronomy 24:1-4" (pp. 239–268) – investigates how the procedure of divorce stipulated in the laws of Gortyn (known as the Gortyn Code, Ancient Crete) negotiates status and property. Scholars of the Hebrew Bible look mostly to Mesopotamia and other parts of the ancient Near East for background data as they seek to understand biblical texts in their sociocultural context. They often overlook ancient Greece and its environs. The study of Anselm Hagedorn seeks mainly to glean insights from the laws in Crete governing marriage and divorce. Toward the end of the discussion, Hagedorn explores how those insights might inform an interpretation of Deut 24:1-4 (divorce law in Dtr).

In the next essay – "Divorce Instruction and Covenantal Unfaithfulness: A New Examination of the Reuse of Deuteronomy 24:1-4 as Metaphor in Jeremiah 3:1-10" (pp. 269–285) – Kenneth Bergland, a pastor in Vesterålen, in the north of Norway, takes up the case of textual relation between Deuteronomy 24:1-4 and Jeremiah 3:1-10. The majority of scholars see Jer 3:1-10 as dependent upon the law of Deuteronomy – but the textual support provided for this claim is often weak. Kenneth Bergland point out three textual indicators for why Jer 3:1-10 seems to be dependent upon Deut 24:1-4, and not vice versa. He also explores the role that Deut 24:1-4 appears to play in Jer 3:1-10. Jeremiah 3 uses the law of divorce and remarriage from Deut 24:1-4 metaphorically for the relationship between God and his people. The study of Kenneth Bergland evaluates the textual basis for claiming that Jer 3:1-10 reuses and depends upon the prohibition against a husband remarrying his formerly divorced wife in Deut 24:1-4. He want to demonstrate how the latter is incorporated into the line of thought of the former.

In the last essay – "Sexual Relations and the Transition from Holy People to Human Sanctuary in Second Temple Times" (pp. 286–308) – Hannah K. Harrington, Professor of Old Testament at Patten University, Oakland, takes up the case of presenting the community of Israel as a temple. Several Second

Temple authors interpret Israel's holiness to mean that the bodies of Israel form a sacred residence, or sanctuary. Philo of *Alexandria*, saint Paul, and the author of 4QFlorilegium refer to Israel as a temple. Hannah Harrington looks inside the Torah to discover the effect, if any, of biblical legal traditions on the notion of people-as-temple in various forms of Second Temple Judaism. She points out that the purpose of the tabernacle/temple was for God to be resident among Israel, not just present in his house (Exod 25:8). Harrington examines interpretations of traditions from biblical law that reveal a shift in emphasis from the sanctuary as the temple and its cult to the notion that the people of Israel form a sanctuary which houses the presence of God. This sanctuary can be desecrated by illicit sexuality, can be polluted by wrongful sexual relations.

This volume covers such important issues as the status of men and women in the Hebrew Bible, marriage and divorce in ancient Israel and many narratives on a marital relationship and application of the sexual laws. Essays included in the book provide a foundation for those wishing to explore some of the different ways in which sexuality was understood and regulated in both the Hebrew Bible and the culture that produced it. From their own unique perspectives, the authors raise important questions at the intersection of sex, law, culture, and religion. The book does not exhaust the subject of sexuality in relation to law in the Bible, but provides important contributions to further study of these issues.

