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The Problem of Monogamy vs. Polygamy and Its Regulation in the Mosaic Law as well as in Later Jewish and Christian Commentaries¹

The essential difference between the Jewish and the Christian traditions is, that the Mosaic Law, the Torah has been regarded in Judaism as a legal and state-creating, constituent factor, i.e. as a source of law; whereas in the Christian tradition, in accordance with the strict hermeneutic specified in the epistles of the Apostle Paul, it is not binding on non-Jewish believers and is only of a teaching nature. All the other books of the Old Testament are understood by both traditions as commentaries of divine origin and authority for the correct interpretation of the Torah, while the rest of the Jewish commentary literature on the whole Old Testament from antiquity to the present is known collectively as rabbinic literature. A – Christian – commentary of the Torah is also the New Testament itself, which also has divine authority in the Christian tradition. Through the Pauline hermeneutic, the Mosaic Law could only have influenced indirectly the development of medieval European ecclesiastical and secular legal systems as wisdom literature and exemplary texts reinterpreted by the New Testament, and not as a direct source of law. This paper examines the question of monogamy and polygamy in Mosaic Law and its commentaries. The Torah suggests monogamy as an ideal state, while at the same time allowing polygamy both ethically and legally. Nowhere does the New Testament explicitly prohibit polygamy except in the case of presbyters. Therefore, there was already a debate on the issue even in antiquity, in the vast textual ocean of rabbinic tradition, but the clearly lenient Torah rules made the obligatory abolition of polygamy out of the question.

Keywords: marriage law, monogamy, polygamy, Mosaic Law, Jewish and Christian commentaries

1. The basic concepts²

The Mosaic Law, the *Torah* (guidance, teaching, law) or *Pentateuch*,³ comprising the total of 613 divinely inspired and authoritative commandments contained in the biblical books from Genesis to Deuteronomy, is understood as a unified system (a system of interdependent commandments)

¹ The study was conducted in the framework of the research project *The Legal Relevance of the Vetus et Novum Testamentum. Parallels between the Jewish-Christian and Roman Law Roots of our Legal Culture* (No. 138899).

² I have been quoting in this paper the Bible in English from the NRSV, indicating wherever I have given my own translation. The Masoretic Hebrew text (MT) is quoted from the 1987 edition of *Biblia Hebraica Stuttgartensia*. For the New Testament, I have taken the *textus receptus* as authoritative, but have aligned it with the critical edition (NESTLÉ – ALAND, 1979). I have quoted the ancient rabbinic texts (Mishnah, Talmud, Midrash) and Rashi from the Soncino CD-ROM edition (Soncino Classics Collection, Jerusalem 2006).

³ WELLS, What is biblical law? 223–243; WESTERHOLM, Torah, nomos, and law 327–336.

because of the natural requirement of unity of law.⁴ Given that this system also advocates and regulates the construction of a theocratic state, it has also been regarded in Judaism as a legal and state-creating, constituent factor, i.e. as a source of law; whereas in the Christian tradition, in accordance with the strict hermeneutic specified in the epistles of the Apostle *Paul* (also bearing scriptural, divine authority for the Christians),⁵ the *Torah*, which is not binding on non-Jewish believers and is only of a teaching and advisory nature, did not become a legal and state-creating factor, i.e. a source of law, directly and in its entirety, in medieval Europe. This is the essential difference between the two traditions.⁶

The Pentateuchal state took three forms in ancient Jewish history: 1, In the age of the judges, a unified judicial structure was organised on the basis of patriarchal blood-relations (family-clan-tribe-nation, paternal princes), yet with a five-tiered system of appeal (with one judge for every 10 men!), with the absolute political power of the assembly of the people (*qahal*, *ekklesia*) (fifteenth century BC – eleventh century BC).⁷ 2, The same structure was transformed into a constitutional monarchy by the decision of the *qahal* in the age of kingship (eleventh century BC – 586 BC). 3, Then, with the loss of independence, as a province of various pagan empires, an autonomous or semi-autonomous system of self-governing community, to the extent that the empires determined, both in the Holy Land and in the diaspora (586 BC – 73 AD).⁸

All the other books of the Old Testament (Hebrew: *Tanakh*) written during this period (in its Jewish division: Prophets and Writings; in the Christian division: Books of History, Books of Wisdom, and Prophets) are also understood by both traditions as commentaries of divine origin and authority for the correct interpretation of the *Torah*, yet because of the hermeneutical difference described above, in Judaism, they are a source of perpetually binding law;⁹ whereas in the Christian tradition, they are only regarded as ethical-spiritual doctrine in the allegorical-figurative sense, without any state-creating power or legal force.

The rest of the Jewish commentary literature on the *Tanakh* from antiquity to the present is known collectively as rabbinic literature, itself a source of law (based on customary legislation). The foundational documents bearing the greatest – yet not divine – authority are the two *Talmuds* (“learning”): the Babylonian and the Jerusalem *Talmud*.

Another – Christian – commentary on the *Tanakh* is the New Testament, which also has divine authority in this tradition. Again, through the Pauline hermeneutic already described above, the Mosaic Law¹⁰ could only have influenced indirectly – and did indeed influence – the

⁴ RUFF, The Immanent Principles of the Unified System of the Mosaic Law; JACOBS – DEROVAN, Hermeneutics. [http://www.jevzajcg.me/enciklopedia/Encyclopaedia%20Judaica,%20v.%2009%20\(Her-Int\).pdf](http://www.jevzajcg.me/enciklopedia/Encyclopaedia%20Judaica,%20v.%2009%20(Her-Int).pdf).

⁵ Letters to the Romans, Galatians, Colossians discuss this topic mainly.

⁶ RUFF, Az Újszövetség és a Tóra 63–64.

⁷ RUFF, A zsidó joggyakorlat bibliai alapjai Jézus korában 123–135; HAMMER-KOSSOY, Divine Justice in Rabbinic Hands; DAVIES, Trial Procedure, Jurisdiction, Evidence, Testimony 45–58.

⁸ KEE, Central Authority in Second-Temple Judaism and Subsequently 51–63; WILSON, Israel’s Judicial System in the Preexilic Period 229–248.

⁹ WEISS, The Bible from Within: The Method of Total Interpretation; RUFF, Az Újszövetség és a Tóra 47–53.

¹⁰ GÜDEMANN, Die Neugestaltung des Rabbinenwesens und deren Einfluss auf die talmudische Wissenschaft im Mittelalter 421–444.

development of medieval European ecclesiastical and secular legal systems as wisdom literature and exemplary texts reinterpreted by the New Testament, and not as a direct source of law.¹¹

2. The regulation of the problem of monogamy vs. polygamy in the Mosaic Law

Generally speaking, the *Torah* suggests monogamy as an ideal state (as an archetype of *Adam* and *Eve* in the Garden of Eden),¹² while at the same time allowing polygamy both ethically and legally. Ethically, because nowhere does the *Torah* (nor does the entire Old Testament) contain a morally condemnatory statement against it; and legally, because it is regulated with natural self-evidence¹³ and nowhere is it forbidden or sanctioned (indeed, the divine command of so-called levirate marriage¹⁴ cannot be fulfilled without it if the brother was married before).

Most of the ancestors who are kept in highest esteem (*Abraham*, *Jacob*, etc.) were polygamous,¹⁵ and the Old Testament states that the “*man after God’s own heart*,” King *David* had 18 wives or concubines¹⁶ (while Scriptures identify King *Solomon’s* 1,000 wives as an indirect cause of his downfall,¹⁷ since the *Torah* intimates that a king should not have “*many*” wives).¹⁸

A principle that runs through the Hebrew Bible – yet without being stated there – is that a man may have several wives, but a woman may not have several husbands. Of course, the male-female relationship is not symmetrical, nor emancipated in the Pentateuchal legal system:¹⁹ a woman is always subordinated to the authority of men (her father, brother, or husband) in her spiritual, ethical, legal, and existential status (although she is equal to men in her humanity before God).²⁰

Animals bred by herdsmen (according to the biblical concept, “pure” animals) are polygamous in nature, i.e. people matured a natural, “professional” experience that the mating of blood relatives leads to the degeneration of the herd; and since the identity of the mother is always certain at birth – but that of the father is certain only if there are no more rams/he-goats/bulls –, therefore, the sexually mature males must be separated, sold to another herd, or slaughtered, etc.; that is to say, it was logical to exclude polyandry, but not polygyny.

This polygamous culture was not constituted by the *Torah* (since the *Torah* presented polygamy as part of its antecedents), but it naturally accepted and regulated it as a given.

¹¹ SEGAL, *Torah and nomos in recent scholarly discussion* 19–27. On the interpretation of the image of women in the Old Testament in Christian commentary, see HACK, “A derék asszony dicsérete” 34–54. HAMZA, *La Bible dans les oeuvres des adhérents de l’École des Glossateurs et de l’École des Commentateurs* 140–151. On the influence of Old Testament marriage law on the Family Concept of the Protestant natural lawyers, see HERGER, *A 17. századi protestáns természetjogászok családképe* 62–98.

¹² Gen 1–3.

¹³ For example Ex 21:10, Deut 21:15–17.

¹⁴ Deut 25:5–10.

¹⁵ For example Gen 16:29–30.

¹⁶ 1 Sam 18:27, 2Sam 3:2–5, 12:24–25, 15:16.

¹⁷ 1 Kings 11:1–10. A rabbinical commentary on the case: Talmud Yerushalmi, Sanhedrin 2,20c.

¹⁸ STRACK – BILLERBECK, *Kommentar zum Neuen Testament* I, 244–248.

¹⁹ Gen 3:16, Num 30.

²⁰ Gen 5:2.

The *Torah* regulates polygamous marriage in several ways. “If he takes another wife to himself, he shall not diminish the food, clothing, or marital rights of the first wife.”²¹ The *Talmud* later regulates this down to the smallest detail:²² the woman could sue her husband in the rabbinical court, and the court could penalize him, if she did not receive the required number of sandals and clothing each year, or if he did not have intercourse with her as frequently as it was defined depending on his job, after he brought home another wife. Obviously, the obligation to take full care of one’s wife (or wives) also made polygamy a matter pertaining to property law for men – yet the many children also created the possibility of prosperity later in life.

According to another *Torah* commandment, if a man dislikes one wife and loves the other, but the son of the disliked one is his firstborn (that means double heritage above the other brothers), he cannot make the son of the beloved wife the firstborn instead of the son of his disliked wife.²³

The *Torah*, incidentally, provides an illustrative example of this law in the family life of the ancestor Jacob, where *Leah* was the “disliked” wife and *Rachel* the “beloved” one,²⁴ who – plus the two maids of the two wives as concubines – gave birth to the 12 patriarchs,²⁵ whose courses of life also revealed the inner world of this polygamous family, divided by tensions (e.g. *Joseph* against his brothers).²⁶ Nevertheless, the Bible does not pass any negative moral judgement on the polygamy of the patriarch.

The *Torah* also acknowledges and regulates the concept of the concubine:²⁷ she is in the same covenantal relationship with her husband as his wife (she cannot be in sexual relationship with someone else; she receives full benefits), with the only exception that her children will not inherit. The first precedent for this regulation is *Abraham* himself.²⁸

The *Torah* permits divorce at the husband’s initiative²⁹ (later extended to the wife by rabbinic law), but in the later parts of the Old Testament it is severely condemned as a moral atrocity, at least in the case of the first wife (“the wife of your youth”),³⁰ but not legally sanctioned (“its punishment is in the hand of heaven,” as per the *Talmud*).³¹ There was a heated debate in rabbinic Judaism as to whether a man can divorce his wife only for her adultery (*Shammai*) or for any other reason as well (*Hillel*).³² *Jesus* himself contributed to the debate, arguing in favour of the more restrictive

²¹ Ex 21:10, NRSV. The recommendation of monogamy as a more ideal way of life also appears in the rabbinic tradition: “You shall not, my son, take a second wife”, but the sentence continues: “Yet if you do, you shall take a third one too” – and the medieval commentary on the margin adds: “Otherwise the two will make a pact against you.”

²² In the Gittin (Divorces) tractate. See also SCHECHTER – GREENSTONE, Get – “bill of divorce” <https://www.jewishencyclopedia.com/articles/6643-get>.

²³ Deut 21:15–17.

²⁴ Gen 29:28–31.

²⁵ Gen 30.

²⁶ Gen 37–50.

²⁷ HIRSCH, Pileges, <https://www.jewishencyclopedia.com/articles/4585-concubinage>.

²⁸ Gen 21:9–14, 25:1–5.

²⁹ Deut 24:1–4.

³⁰ Mal 2:13–16.

³¹ See the rabbinical commentary: Talmud Bavli, Gittin 90b; Beresith Rabba 18:5; and see ABRAHAM, Studies in Pharisaism and the Gospels, vol. I., p 66ff.

³² Mishna, Gittin 9:10 (Talmud Bavli, Gittin 90a).

position of *Shammai*.³³ Judaism later followed *Hillel's* more permissive decision, while the Christian tradition followed that of *Shammai* through *Jesus*.³⁴

It is important to note, however, that the interpretation of this Gospel text will be quite different, both ethically and legally, when interpreted in a polygamous, Pentateuchal context (where it was originally formulated) and when interpreted in a monogamous context (where it was placed later by the church), because in the first case the husband can take another wife without committing adultery or without divorcing from his first wife, while in the other case he has to divorce from her without reason, this way marrying the second wife means adultery for him.

3. The regulation of the problem of monogamy vs. polygamy in the New Testament and in the Church

The New Testament was born in a semi-autonomous, Pentateuchal Jewish society under the rule of the Roman Empire (at the time of *Jesus* Himself) and then unfolded in Greek and Roman culture (at the time of the apostles), but it has continued to look to the Old Testament as its spiritual and moral guide. *Jesus Christ* affirmed the eternal validity of all the commandments, down to the letter of the Mosaic Law,³⁵ and his teaching was followed by the apostles.³⁶

Nowhere does the New Testament explicitly prohibit polygamy except in the case of presbyters (elders, bishops), i.e. the leaders of congregations, where monogamy is regarded to be a condition.³⁷ The “*presbyters are examples to the flock*,” writes the apostle *Peter*,³⁸ so the example of monogamy is recommended, as well as a sign of the return of redeemed men to the ideal of the garden of Eden, but polygamy is not forbidden among ordinary believers.

At this point, we cannot depart from the milieu of Christian communities, the Roman Empire, whose legal system made monogamy obligatory.³⁹ Nowhere does the text of the New Testament encourage the creation of a Christian theocratic state, but rather calls for obedience to the authority of the host nations (with some limitations though).⁴⁰ Thus, the Western idea of monogamy, enforced by the force of the state's legal order, is rooted in Roman law rather than in the Old Testament. Polygamy continued to be practised in the ancient Christian churches that proliferated outside the Empire, and missionaries ministering towards polygamous cultures are still trained in seminaries today not to require believers who converted in a state of polygamy to dismiss their wives above the monogamous quota; however, only monogamous men can be church leaders, even amid polygamous people.⁴¹

³³ Mat 19:3–9; Mark 10:2–12.

³⁴ EBERHARTER, Das Ehe- und Familienrecht der Hebräer mit Rücksicht auf die ethnologische Forschung dargestellt; BILLAUER, Grundzüge des babylonisch-talmudischen Eherechts 69–72.

³⁵ Mat 5:17–20.

³⁶ Romans 3:31, 2Timothy 3:16, 2Peter 1:20–21. For an interpretation of the Mosaic Law in early Christianity, see RUGÁSI, A mózesi Törvény értelmezése a 2. században 123–139.

³⁷ 1 Timothy 3:2, Titus 1:6 (also a divine source of law for later canon law).

³⁸ 1 Peter 5:3.

³⁹ RABELLO, Jewish and Roman jurisdiction 141–167; SCHULTZ, Classical Roman Law 103; BENEDEK, A manusszerzés és a házasságkötés alakításai a római jogban; HAMZA, A római jog története és intézményei 250–255.

⁴⁰ 1 Peter 2:13–14. The same principle in rabbinic literature: „*Dina de-malkhuta dina*” (The law of the kingdom is the law: Babylonian Talmud, Nedarim 28a, Gittin 10b, Baba Kamma 113a, Baba Batra 54b–55a.)

⁴¹ HILLMAN, Polygamy Reconsidered: African Plural Marriage and the Christian Churches.

Theologians also see the New Testament's recommendation of monogamy in the fact that the New Testament Greek quotations of the Hebrew sentence "*they shall be one flesh*"⁴² – which expresses the essence of marriage – invariably insert the word "*two*," thus reading "*the two shall be one flesh*." This, as many theologians argue, is a way of making monogamy obligatory and exclusive. However, others maintain that such an inferred reference cannot be a source of legislation that is binding on all, enforced by ecclesiastical or even state sanctions, but at most only recommendatory; thus, once again, we can detect the influence of Roman law in the strong legal anchoring of the later European ideal of monogamy.

The situation is further complicated by the fact that a similar internal debate took place in the world of diaspora Judaism, which lost its country of reference in 73 AD. The insertion of the numeral "*two*" is often found in *targums*⁴³ translating the sacred Hebrew text into Aramaic.

4. The regulation of the problem of monogamy vs. polygamy in the rabbinic tradition

There was already a debate on the issue even in antiquity, in the vast textual ocean of rabbinic tradition, which in many cases precisely records the unresolved disputes, but the clearly lenient *Torah* rules made the obligatory abolition of polygamy out of the question. (As I mentioned, there are also commandments that in many cases can only be kept in polygamy.)

However, after Christianity became a state-building factor on the ruins of the Roman Empire, and then the medieval structure of Western Europe was established, one of the greatest authorities of Ashkenazic (Christian) Jewry, Rabbenu *Gershom* (*Gershom ben Judah*, c. 960–1040), by a rabbinical decree (*takkanah*), made polygamy practically impossible for Jews (he subjected it to the permission of the chief rabbis of a hundred provinces),⁴⁴ so that Ashkenazi Jewry switched to a monogamous way of life from the tenth–eleventh centuries onwards.⁴⁵

Although the *takkanah* does not contain any justification, it was clear to all that the decree was prompted by the need to live peacefully with the Christian majority. For this reason, Sephardic (Muslim) Jewry did not adopt monogamy, and polygamy still exists in their communities today – but the bride and her parents can stipulate in the marriage contract that no other wives are allowed, so that the first-time husband can choose to take up a lifelong commitment to monogamy. Sephardic polygamous families are also accommodated in the legal system of the modern State of Israel, and there is some cultural debate among Ashkenazim about whether to annul the *takkanah* of Rabbenu *Gershom*, i.e., to revert to polygamy. According to rabbinic law, a rabbinic *takkanah* issued because of a situation of necessity may indeed nullify a divinely inspired commandment of the *Torah* (this is what happens here with levirate marriage), but only temporarily and partially – that is, once the situation of necessity has ceased, such a decree must be nullified. In the current Israeli debate, an argument is also made for maintaining population ratios, since polygamous

⁴² Gen 2:24. Even so early the Septuagint translation (B.C. 300) inserts here the words „*the two*” (*hoi duo*).

⁴³ *Targum Neofiti*. (The various *targumim* are the aramaic translations of the Hebrew Scriptures used by Jewish Communities in medieval times.)

⁴⁴ SCHECHTER – BLOCH, Gershom ben Judah, <https://www.jewishencyclopedia.com/articles/6615-gershom-ben-judah>.

⁴⁵ See FASSEL, Das mosaisch-rabbinische Zivilrecht 28; SÜSZ, A zsidó házassági jog IV.

Muslim families increase in number more than monogamous Ashkenazi Jewish families. However, there does not seem to be any significant political will in favour of the restoration of polygamy.⁴⁶

The permissibility of the practice of polygamy is still a matter of concern in Israeli public life: *“In 1931, a man was fined by a Jerusalem court⁴⁷ for marrying a second wife without divorcing the first, who apparently had no problem with it. A lawyer argued that the practice should be allowed, since Rabbenu Gershom’s edict had expired, but the court disagreed. A few years after the founding of the State of Israel, the Ashkenazi and Sephardic chief rabbis jointly agreed to ban polygamy, with the latter apparently going along with it because by then most Sephardic communities had already left the practice behind. But not all Sephardic authorities agreed – most famously Ovadia Yosef, then a judge on the rabbinical court of Petach Tikvah and later the Sephardic chief rabbi of Israel, said the ruling of the chief rabbis was invalid and that communities where polygamy was practiced should be allowed to continue to do so even in modern Israel.”⁴⁸* And that these ancient roots can be found in the legal culture to this day is shown, among other things, by the fact that although the State of Israel officially banned polygamy in 1977, it is still possible, exceptionally, if the Chief Rabbinate approves such a marriage.⁴⁹

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⁴⁶ See for example SEDLY, In defiance of Israeli law, polygamy sanctioned by top rabbis. The Times of Israel, 27 December 2016, <https://www.timesofisrael.com/in-defiance-of-israeli-law-polygamy-sanctioned-by-top-rabbis>.

⁴⁷ „Ban on Polygamy Pronounced by Rabbi Gershom No Longer Valid and Jews May Now Have More Than One Wife”. In: Daily News Bulletin, Jewish Telegraphic Agency, March 20, 1931, 5., http://pdfs.jta.org/1931/1931-03-20_066.pdf.

⁴⁸ Polygamy in Judaism, <https://www.myjewishlearning.com/article/polygamy-in-judaism> (06. 02. 2023).

⁴⁹ RADZYNE, Halakhah, Law, and Worldview 261–304.

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