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Studien zur Genderkonstruktion und
zum Eherecht in den Mittelmeerreligionen

Herausgegeben von
Matthias Morgenstern, Christian Boudignon
und Christiane Tietz

Vandenhoeck & Ruprecht



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Inhalt

MATTHIAS MORGENSTERN, CHRISTIAN BOUDIGNON, CHRISTIANE TIETZ Einführung	9
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I. Zentrale Texte und ihre Auslegung

JOACHIM J. KRAUSE (Tübingen) Aspects of Matrimonial Law in the Pentateuch and the Pentateuch as a Source for Matrimonial Legislation	15
--	----

ANDERS KLOSTERGAARD PETERSEN (Aarhus) Auf der Suche nach einem Rahmen zum Verständnis der Konzeption von Geschlecht und Sexualität im frühen Christentum	33
--	----

SERGE RUZER (Jerusalem) Marital Halakhah and Eschatology: Patterns of Early Christian Discourse and Their Jewish Setting	67
--	----

MATTHIAS MORGENSTERN (Tübingen) Das jüdische Eherecht und der christliche Virginitätsdiskurs: Eine religionsvergleichende Skizze anhand des Traktates Ketubbot im Jerusalemener Talmud	87
---	----

CHRISTIANE TIETZ (Mainz) Ebenbildlichkeit. Vom androgynen Menschen zum zweigeschlechtlichen Gott. Die Rezeption von Gen 1,27 in der Geschichte der christlichen Dogmatik	119
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EDOUARD ROBBERECHTS (Aix-en-Provence) Die Beziehungen von Mann und Frau in der Kabbala: Mittelpunkt des Kultes und Mittelpunkt des Volkes?	139
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II. Rechtliche und soziale Kontexte

PATRICK LAURENCE (Tours) Der <i>Codex Theodosianus</i> : eine sexistische Gesetzgebung?	173
--	-----

ROSA MARIA PARRINELLO (Turin) The Justinianean Legislation regarding the Wives of the Monks and Its Context: The Letters of Barsanuphius and John of Gaza	193
MARIACHIARA GIORDA (Turin) Frauen in den ägyptischen Klöstern der Spätantike: einige familiäre Funktionen	205
CHRISTIAN BOUDIGNON (Aix-en-Provence) „Darf der König seine Nichte heiraten?“ Ein politisch-religiöser Disput über Inzest und Ehepolitik im Byzanz des siebten Jahrhunderts	221
YEHOŠHUA FRENKEL (Haifa) Marriage and Family in Mamluk Palaces	239
MIRIAM FRENKEL (Jerusalem) Slavery in Medieval Jewish Society under Islam: A Gendered Perspective	249
ÉRIC CHAUMONT (Aix-en-Provence/Jerusalem) Der Begriff der <i>‘awra</i> nach Abū l-Ḥasan ‘Alī b. Muḥammad b. al-Qaṭṭān al-Fāsī (gest. 628 A. H./1231 n. Chr.)	261
RICHARD PUZA (Tübingen) Die Ehe von Katholiken in einer multikulturellen und multireligiösen Welt. Die kirchenrechtliche und liturgische Basis mit einem Vorschlag für die liturgische Gestaltung katholisch-jüdischer Ehen	271
 III. Transformationen 	
HANS-PETER GROSSHANS und SIMONE SINN (Münster) Gleichzeitigkeit des Ungleichzeitigen. Protestantische Transformationen im christlichen Verständnis der Geschlechterdifferenz	293
ALEXANDRA WÖRN (Tübingen) Marriage, Scripture and the Place of Women in Early Modern English Feminist Writings. Some Reflections	317
PETER YESHAYAHU BALOG (Tübingen/Yad Binyamin) The Metaphysics of Jewish Parenthood According to S. R. Hirsch and Isaac Breuer	335
RICHARD PUZA (Tübingen) Die kirchenrechtlichen Grundlagen des männlichen Priesteramts	353
LISA ANTEBY-YEMINI (Aix-en-Provence) Israeli Jewish Weddings: between Religious Law and Innovation	373

ARI OFENGENDEN (Tübingen/Oberlin)	
Man – Woman, Prophet – Priest: Charisma and Chauvinism in Hebrew Modernism	391
FRANÇOISE SAQUER-SABIN (Lille)	
Frauen, Ehe und Erotik in der israelischen Literatur hebräischer Sprache	399
MOUEZ KHALFAOUI (Berlin)	
Female Apostasy in Islam. Historical Debate and Current Challenges ...	409
Indices: Schriftstellen, Personen	421
Autorinnen und Autoren	431

Einführung

„Männlich und weiblich schuf Er sie“ (Gen 1,27). Schon zu Beginn der Bibel spielt die Unterscheidung von Mann und Frau eine zentrale Rolle. Deshalb mag der Eindruck entstehen, Männlichkeit und Weiblichkeit seien, weil von Gott geschaffen, „natürliche“, unveränderliche Gegebenheiten, die entsprechend auch ein bestimmtes von Gott gegebenes Geschlechterverhältnis beinhalteten. In allen drei sich auf diesen Text beziehenden Religionen, Judentum, Christentum wie Islam, sind solche Ansichten immer wieder vertreten worden.

Wer *heute* die biblische Schöpfungserzählung zitiert, wird aber kaum mehr dem Missverständnis Vorschub leisten wollen, das Verhältnis von Mann und Frau beruhe nur auf „natürlichen“ und nicht vor allem auch auf historischen und sozio-kulturellen Bedingungen. Das historische Gewordensein der Geschlechterrollen in den unterschiedlichen Kulturen und Gesellschaften in ihren jeweiligen Kontexten ist in den vergangenen Jahrzehnten geradezu zu einem Gemeinplatz der historischen, soziologischen und ethnologischen Forschung geworden. Dass die Differenz der Geschlechter in großem Maße konstruiert ist, hat zu einer neuen Sicht auf die Texte geführt, die sich mit Mann und Frau beschäftigen.

Darüber hinaus ist diese „Konstruktion von Gender“, also das Verständnis der sozialen und psychologischen Geschlechtlichkeit in Unterscheidung vom anatomisch determinierten Geschlecht, auch in den Mittelpunkt des politischen Interesses gerückt. In der öffentlichen Wahrnehmung gelten die in diesem Zusammenhang verhandelten Fragen – von der Gleichstellung von Frauen im öffentlichen Leben über „gender mainstreaming“ bis hin zum Umgang mit sexuellen Minderheiten – oftmals geradezu als Prüfstein für die Modernitätsreife einer Gesellschaft oder eines gesellschaftlichen Subsystems, etwa einer Religionsgemeinschaft. Das hängt mit den sozio-ökonomischen Modernisierungsschüben zusammen, die die westlichen Gesellschaften im vergangenen Jahrhundert erfahren haben. Angesichts der unterschiedlichen Einwanderungsbewegungen in die europäischen Gesellschaften und der damit zusammenhängenden demographischen Veränderungen rücken in neuerer Zeit Fragen in den Vordergrund, die mit der religiösen Kodierung von Gender zu tun haben.

Die hier gegenwärtig verhandelten Themen entbehren gelegentlich nicht einer gewissen Brisanz: Sie berühren Konfliktlinien der interreligiösen Beziehungen oder des Verhältnisses von Säkularität (bzw. Laizität) und Religion, wenn es etwa wie in Belgien oder Frankreich um die strafrechtliche Durchset-

zung des Verbotes des Ganzkörperschleiers (Burka) im öffentlichen Raum geht. Stereotype Vorstellungen im Hinblick auf Ehe und Sexualität spielen für die Beziehungen von Orient und Okzident seit langem eine Rolle. Schon im 19. Jahrhundert hatte der französische Schriftsteller Charles-Jean-Marie Letourneau geschrieben, die Ehe sei für die „semitischen Völker“ nicht mehr als ein käuflicher Erwerb,¹ und der deutsche Graf von Moltke hatte hinzugefügt, im Osten bestehe die eheliche Verbindung nur aus sinnlichem Vergnügen.² In der Gegenwart wird über anatolische Importbräute und Zwangsehen (in Deutschland) und über polygame Verhältnisse von afrikanischen Einwanderern (in Frankreich) debattiert. Diese Diskussionslage hat in den westlichen Gesellschaften dazu geführt, dass Genderfragen häufig gerade von konservativer Seite aus zum Thema gemacht werden – mit Blick auf die von denselben Gruppen meist bekämpften oder eher zurückhaltend begleiteten oben angesprochenen gesellschaftlichen Modernisierungsbewegungen des letzten Jahrhunderts kann man dies nicht anders als paradox nennen.

Nimmt man die interreligiösen Beziehungen von Judentum, Christentum und Islam näher in den Blick, so kann der Eindruck entstehen, als seien diese Beziehungen – zumindest dort, wo sie konfliktartig sind – in jeweils spezifischer Weise „gegendert“, d. h. von unterschiedlichen Auffassungen über die Geschlechter bestimmt. Bezogen auf den Nahostkonflikt wird etwa auf die Rolle von Frauen in der israelischen Armee hingewiesen,³ und in der jüdisch-islamischen Polemik, wie sie aus dem Palästina-Konflikt erwachsen ist und von dort – nicht ohne anachronistische Züge – in die judäo-arabische Geschichte zurückprojiziert wird, hat Safiya bint Huyay, eine *jüdische* Frau des Propheten Mohammed, eine gewisse Berühmtheit erlangt.⁴ In der jüdisch-christlichen Beziehungsgeschichte hat demgegenüber die Frage nach der Deutung des Verhältnisses Jesu zu den Frauen zu Auseinandersetzungen geführt. Muss die „Frauenfreundlichkeit“ des Nazareners als des „ersten neuen Mannes“ vor dem Hintergrund einer finsternen jüdisch-pharisäischen Frauenfeindschaft verstanden und profiliert werden?⁵ Oder ist umgekehrt der christliche Feminismus als offen oder latent antijudaistisch oder zumindest der Teilhabe an dem

1 CH. LETOURNEAU, *L'Evolution du mariage et de la famille*, Paris 1888, 147.

2 H. GRAF VON MOLTKE, *Unter dem Halbmond. Erlebnisse in der alten Türkei, 1835–1839*, Berlin 1988, 80.

3 U. KLEIN, *Militär und Geschlecht in Israel*, Frankfurt am Main 2001.

4 Zur Polemik im Internet über diese Frau – die Gefangene eines von den Muslimen geschlagenen jüdischen Stammes, mit der der Prophet Mitleid hatte und die er heiratete, vgl. <http://infad.usim.edu.my/modules.php?op=modload&name=News&file=article&sid=8233>, http://www.eslam.de/begriffe/s/safiya_bint_huyay.htm und <http://www.flex.com/~jai/satyamevajayate/playboy.html> (11.5.2010) und T. NAGEL, *Mohammed. Leben und Legende*, München 2008, 523.940.942.

5 Vgl. die Diskussion um das Buch des Fernsehjournalisten F. ALT, *Jesus – der erste neue Mann*, München 1989; dazu: M. BRUMLIK, *Der Anti-Alt. Wider die furchtbare Friedfertigkeit*, Frankfurt am Main 1991.

unheilvollen antijüdischen Erbe der christlichen Kirchengeschichte zu verächtigen?⁶

Wenn in diesem Band Religionswissenschaftler, Theologen und Historiker unterschiedlicher Disziplinen aus acht Ländern der Europäischen Union und rings um das Mittelmeer Studien zur historischen Genderkonstruktion in den Mittelmeerreligionen vorlegen, so ist ihnen die politische Relevanz, die Genderfragen heute nicht anders als anderen Themen des interreligiösen Verhältnisses zukommt, wohl bewusst. Mit dem Ausgangspunkt der biblischen Vorstellung von der Schöpfung des Menschen als „Mann und Frau“, die sie dann in ihrer Wirkungsgeschichte und im Hinblick auf ihre Folgerungen für das Eherecht im Judentum, Christentum und im Islam untersuchen, wählen sie freilich einen gewissermaßen distanzierenden Ansatz – in der Hoffnung, die Beschäftigung mit der historischen Tiefenperspektive möge etwas zum Verständnis gegenwärtiger Debatten und Probleme beitragen. Bemerkenswerterweise ist die Vorstellung der doppeltgeschlechtlichen Erschaffung des Menschen schon in den biblischen Texten nicht widerspruchsfrei: Die Spannungen zwischen dem ersten und zweiten Schöpfungsbericht führte bereits die frühjüdische und frühchristliche Exegese zu der Annahme, Gott habe zu Beginn einen androgynen Menschen geschaffen, der erst in einem zweiten Schritt in Mann und Frau aufgespalten worden sei. In den Aufsätzen dieses Bandes werden – in unterschiedlicher Perspektive – die wichtigsten späteren Transformationen und gesellschaftlich-religiösen Metamorphosen der biblischen Gendervorstellung sichtbar. Behandelt werden Texte der heiligen Schriften der drei Religionen – von der Hebräischen Bibel über das Neue Testament, den Talmud und Koran bis zum kabbalistischen Schrifttum – sowie in den unterschiedlichen Rechtstraditionen, der Halacha, der Scharia, dem römisch-katholischen Kirchenrecht sowie dem Codex Theodosianus und Justinianus. Ausgehend von der patriarchalen, polygamen und teilweise endogamen Gesellschaft, wie sie in den ersten Büchern der hebräischen Bibel zum Vorschein kommt, über die Texte aus der Zeit des zweiten Jerusalemer Tempels und der späteren Antike, die sich auf die Texte des Alten Israel zurückbeziehen, entsteht so ein buntes Bild, in das die Gendervorstellungen der griechisch-römischen Welt mit einzubeziehen sind. An markanten Beispielen wie dem spätantiken Mönchtum, der Sklavengesetzgebung nach jüdischen Texten in der Kaienser Genisa, der Heiratspolitik der Mamluken in Ägypten und der byzantinischen Herrscher in Konstantinopel, der islamischen Kleidungsvorschriften oder dem frühen christlichen Feminismus werden sodann Kontexte dieser Auslegung und die ihr entsprechende Praxis vorgestellt. Es stellt sich heraus, dass die Frauen- und Männerbilder durch die Jahrhunderte überraschende inhaltliche und formale Übereinstimmungen und Parallelen, zu-

6 Zur Diskussion über den (angenommenen oder tatsächlichen) antijüdischen „Schatten“ des christlichen Feminismus vgl. L. SIEGELE-WENSCHKEWITZ, *Verdrängte Vergangenheit, die uns bedrängt. Feministische Theologie in der Verantwortung für die Geschichte*, München 1988.

gleich aber auch Divergenzen aufweisen, die vor allem mit den Wandlungsprozessen zusammenhängen, die Judentum, Christentum und Islam im Laufe ihrer Geschichte durchlaufen haben.

Die Aufsätze gehen auf Vorträge zurück, die in den Jahren 2007 und 2008 auf drei Symposien in Aix-en-Provence, Jerusalem und Tübingen gehalten wurden. Diese drei Symposien fanden im Rahmen eines von der Europäischen Union im Rahmen des Sixth Framework Programme „Priority 7: Citizens and Governance in a Knowledge Based Society“ finanzierten Netzwerkes zur Förderung der geisteswissenschaftlichen Forschung und Zusammenarbeit im euro-mediterranen Raum statt: dem Exzellenznetzwerk „Ramses 2“ – réseau euro-méditerranéen des centres de recherche en sciences humaines sur l’aire méditerranéenne. Unser Dank gilt Thierry Fabre, dem wissenschaftlichen Koordinator des Gesamtprojekts, sowie den Mitarbeitern des Teilprojekts „homme et femme il les créa“ an allen drei „Standorten“, die die gemeinsame Arbeit ermöglicht haben: Nathalie Llorca, Chloé Châtelin, Sandrine Pitou, Ajkuna Hoppe, Joachim Krause, Michael Hornung, Doru Doroftei, Alexander Toepel und Dominik Rößler sowie Katell Berthelot und den Mitarbeitern des Centre Français de Recherche in Jerusalem und des Institut culturel franco-allemand in Tübingen (in Sonderheit seinem Direktor, Dr. Georges Leyenberger), denen wir für die freundliche Aufnahme in ihren Häusern danken. Zu danken haben wir schließlich dem National Book Centre of Greece für einen namhaften Druckkostenzuschuss.

Die französischen Beiträge dieses Bandes wurden von Maria Krpata, Florian Kohstall, Michael Hornung und Matthias Morgenstern ins Deutsche übersetzt; die englischsprachigen Beiträge wurden von Sarah Prais überprüft und redigiert. Die Zitationsregeln für die biblischen Bücher, die rabbinischen Texte und die weitere Literatur sowie die Abkürzungen und Transkriptionsregeln der hebräischen, griechischen und arabischen Texte folgen in den deutschen Beiträgen den Vorschriften der vierten Auflage der „Religion in Geschichte und Gegenwart“ (2007). Besonderer Dank gilt Monica-Elena Herghelegiu für ihre Hilfe beim Redigieren einiger Texte in der Schlussphase des Projekts. Für die Formatierung der Texte zeichnet Markus Lochstampfer, für einen letzten Korrekturgang Dr. Benedikt Hensel und Miriam Uhlmann, für die Erstellung der Register Dominik Rößler verantwortlich. Ihnen allen sei an dieser Stelle herzlich gedankt.

Tübingen, Aix-en-Provence und Mainz, im Juni 2010

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I. Zentrale Texte und ihre Auslegung

Joachim J. Krause

Aspects of Matrimonial Law in the Pentateuch and the Pentateuch as a Source for Matrimonial Legislation

When we inquire into matrimonial religious law and its impact on the broader question of gender in our cultures and societies, we do so not out of mere intellectual passion, but because it matters.¹ A quick glance at newspaper headlines, political agendas, or prominent law cases in any of the countries we come from will suffice to show that our discussion of gender and marriage is not confined to some academic ivory tower.²

In this debate, the concept of marriage is a contested concept. It is a social institution, which emerged, not least, from our respective religious traditions and still bears the mark of these traditions. Since our concepts of marriage are historical, not natural, being shaped largely by the ongoing practical reception and application of religious traditions, it will be helpful to start with a closer look at the origins of these traditions themselves.³

Among these, the Pentateuch is arguably the single most important origin of all. Historically, a – if not *the* – foundational principle of emerging Judaism was choosing the Pentateuch as the legal basis for development of a compre-

1 This paper was read at the Conference of the Réseau d'excellence des centres de recherche en sciences humaines sur la Méditerranée held at the Centre de recherche français in Jerusalem, March 31–April 1, 2008. The rather general nature of the question is due to the interdisciplinary nature of the network. The paper aims to pave the way for subsequent discussions concerning the reception of matrimonial law in the Pentateuch. – I wish to thank the colleagues and friends of the network for a stimulating discussion of my paper. I also wish to thank Professor Dr. Christl Maier (Marburg) for helpful bibliographic references; Dr. Anselm C. Hagedorn (Berlin) for his comments on an earlier version of this paper; and my friend David Julius Kästle (Oxford) for his remarks concerning matters of legal theory. The remaining mistakes are the ones on which I insisted.

2 To give but one example: While I was writing this paper, the German Federal Constitutional Court (Bundesverfassungsgericht) confirmed in a much disputed vote the culpable nature of incestuous relations (BVerfG, 2 BvR 392/07). In his dissenting minority vote, however, Justice Hassemer argued that the confirmed rule reflected traditional moral values rather than tangible legal issues.

3 Cf. the goal pursued by Perdue, Blenkinsopp, and Collins in their study of families in ancient Israel, namely “to determine what, if anything, the understanding of the family in ancient Israel and early Judaism may contribute to the modern debates about this important institution in contemporary North American society” (PERDUE, Preface, ix). Cf. also OTTO, Stellung, 30: “Wer heute als Exeget zur Frage nach dem Verhältnis der Geschlechter im Alten Testament Stellung nimmt, tut es aus aktuellem Anlaß.”

hensive social legislation, including matrimonial law. Thanks to the religious practice of Judaism – and, later on, Christianity – the Pentateuch became a source for matrimonial legislation not only in the Levant of antiquity but also in many other parts of the world, and remains so today.

1. The Concept of Marriage in the Pentateuch

Turning to the Pentateuch in search of aspects of matrimonial law, the first thing to note is the lack of a technical term for marriage. There is no word like the English “marriage,” the French “mariage” or the German “Ehe.” Considering the economy with which Biblical Hebrew utilizes abstract technical terms in general, this find is not too surprising; the less so as clearly there was a concept of marriage operating comparable to what we would recognize today.

1.1 A Minimal Definition of Marriage

Comparing contemporary concepts of marriage with marriage in the Pentateuch is something *we* do, however; if the enterprise is to succeed, we need a minimal definition of what we mean by “marriage” in the Pentateuch.⁴ Without such a definition, we risk finding in the Bible what we, coming from our own cultural and religious concepts of marriage, expect to find there.⁵

I propose the following minimal definition: When we talk of marriage in our study of pentateuchal texts, we mean a permanent partnership between two or more human beings of different sex, generally establishing a new, self-supporting family by procreation.⁶

4 Heuristically, such a minimal definition should provide a precise specification of the object examined; at the same time it should retain a certain openness of perspective in order to integrate and compare aspects of historical conceptions of marriage, which differ from the concept found in the pentateuchal texts.

5 Cf. ROSENBAUM, *Bedeutung*. Pointing to several cases, she is able to show how practices and laws in the domain of the family are sometimes justified by historical assumptions, which do not stand up to critical analysis. Thus pseudo-historical stereotypes and clichés dominate the sociological conceptualization of contemporary forms of family and marriage as well as the definitions applied. On these issues cf. also HAREVEN, *Family Time*.

6 Cf. the evaluation of common definitions of marriage in BLENKINSOPP, *Family*, 58: “Traditional definitions of marriage presuppose a stable arrangement, legally and often religiously sanctioned, by which two persons of different sex agree to cohabit for the purpose of procreation, sexual communion, mutual support, and economic cooperation.” Cf. also MÜLLER-FREIENFELS, *Ehe*, 956.

1.2 Methodological Considerations

When we turn to the Pentateuch in search of aspects of matrimonial law, serious methodological problems arise. It is necessary to consider these problems briefly, which will also help to clarify the goal of the present study.

First, it is not at all certain whether the explicit laws found in the Pentateuch should be considered actual law.⁷ We have no clear evidence that the laws in the various law collections were originally designed to be put into practice. Nor do we know whether the social practice of marriage in ancient Israel complied with matrimonial law under these law collections, especially since the latter present seemingly hypothetical cases and show programmatic tendencies.⁸ While it does not seem to do justice to the legal materials in the Pentateuch to put their existence down to mere scribal activity, these texts do not lend themselves to being taken at face value either. We cannot simply assume that they prescribed (or described) actual law in their entirety.⁹

Second, the pentateuchal collections contain no complete system of matrimonial law.¹⁰ In particular, it is to be observed that at times the law collections merely offer regulations for deviant behaviour.¹¹ In addition, we must allow for the fact that when the law collections touch upon questions of marriage, they sometimes do so only in the context of other topics, and so cannot be taken for matrimonial law as such.¹²

Third, the law collections, dating from different historical eras and with authors hailing from rather different sociological, ideological, and theological backgrounds, are not necessarily unanimous on specific questions, often because they do not wish to be unanimous.¹³ This general problem also exists in problems of matrimonial law.

Fourth, the problems we face multiply when we look at the Pentateuch as a whole. The Pentateuch came down to us as a composite composition. It contains not only the law collections (which, as we said, are conflicting in part) but also narrative materials stemming from distinctly different strands of tra-

7 Cf. on this problem WELLS, *Biblical Law*.

8 Cf. e.g. the remarks in BLENKINSOPP, *Family*, 61.

9 For a detailed discussion cf. WELLS, *Biblical Law*, and IDEM, *Law and Practice*.

10 We do have rather complete systems of matrimonial law in the collections of cuneiform law from ancient Mesopotamia (cf. e.g. in the Code of Hammurabi §§ 127–177; 178–184).

11 Regarding matrimonial law, we will encounter this problem in the laws of Deuteronomy (cf. below, p. 19.)

12 This holds particularly for the so-called Covenant Code (cf. below, *ibid.*).

13 In fact, there are clear examples of “inner-Biblical exegesis” (or “inner-Biblical interpretation”) to be observed in the pentateuchal law collections. This is most obvious in the relationship between the Covenant Code and the law collection of Deuteronomy, the latter showing a tendency to critical reception, and to transformation of legal material, of the former. For an introduction to the field of inner-Biblical interpretation, cf. FISHBANE, *Interpretation*, especially part two “Legal Exegesis.”

dition and so not necessarily coherent with one another.¹⁴ While it remains to be determined whether the explicit laws have been designed to be actual law, it seems safe to say that the majority of the narrative materials of the Pentateuch (especially those found in the book of Genesis) were not intended by their authors to contribute to a legal system – let alone *one* legal system.

Despite these problems we know that historically the Pentateuch as a whole was taken for one legal system. Whatever the circumstances, from early after its composition the Pentateuch served as actual law and as compelling legal grounds for further legislation, in fact it still does so today.¹⁵ Indeed, it is this history of reception that prompts our search for matrimonial law in the Pentateuch. From the perspective of its later reception as a code of law, we ask the question: What does one find when one looks to the Pentateuch to supply legal grounds on matters of marriage – and what do the texts themselves actually allow to be found? This question addresses neither how things are, nor merely how things are perceived; but it addresses the possibilities and probabilities of perception.¹⁶

Therefore, we need to look at the texts themselves, and we need to do so in the context of other pentateuchal texts. In particular, we need to include narrative materials touching on the question of marriage. Thus, we will follow a combined approach throughout this paper. In what I will call a “direct approach,” the explicit law collections are to be examined, while in an “indirect approach,” we shall take a look at narrative materials in the Pentateuch which pertain to the question at hand and have, just like the laws proper, been received as “law.”

1.3 The Extant Law Collections and Their Provenance

Regarding the collections of explicit law, there are three main sources of relevance to our undertaking. It will be helpful to characterize these sources briefly.¹⁷

First among them is the so-called Covenant Code found in Ex 20,22–23,33,

14 This is not the place to elaborate on the question of how to explain this complex state of affairs, i. e. the question of the composition of the Pentateuch. Cf. BLUM, Studien.

15 Cf. below, p. 28.

16 Since we are not looking at the genesis of matrimonial law in the Pentateuch, the ancient Near Eastern points of comparison lie beyond the scope of our question in this paper. For starting points in this direction, cf. WESTBROOK, Marriage Laws, ROTH, Marriage Agreements, and WUNSCH, Urkunden.

17 By “source” I mean, for present purposes, “those items that have been preserved from the Ancient Near East and that are, in the present, sources for historians in their effort to discover Ancient Near Eastern law” (using the definition of WELLS, Law, 199). As to whether the texts to be thus used as sources are also “items that functioned as sources of law for the societies of the Ancient Near East” (ibid.) – in our case, for ancient Israel, Judah, or Yehud – remains to be determined and seems, at least for some of our sources, highly doubtful.

which, in the composition of the Pentateuch as it has come down to us, is presented as social legislation given by God to Moses at Sinai. Historically, the Covenant Code contains the oldest legal material in the Pentateuch;¹⁸ reading through the Bible canonically, the Covenant Code is also the first legal source to touch on the question of marriage. We should, however, note that the topic of marriage is not discussed in its own right in the laws of the Covenant Code. Rather, the topic is dealt with only insofar as it concerns other topics, which are discussed in their own right. This holds especially for the passage Ex 21,7–11, which does not recommend itself as a source of matrimonial law for that reason. If we look at the context of the passage in Ex 21,2–11, we realize the text does not deal with matrimonial law, but with the rights of Hebrew slaves. The laws concerning the latter do in fact touch on questions of marriage, but they do not intend to make a contribution to matrimonial law as such.¹⁹ The other passage from the Covenant Code dealing with questions of marriage is Ex 22,15–16. This law does not fall within the domain of matrimonial law proper either, but has to do with questions of personal integrity. However, and this is the crucial point, it does deal with marriage between *free* Israelites, not between slaves.²⁰

A much more comprehensive legal treatment of the topic is found in the Deuteronomic law code Dtn 12–26. In its core a pre-exilic collection of legal material, Deuteronomy discusses marriage in its own right.²¹ Relevant material can be found in the passages Dtn 21,10–21; 22,13–29; 24,1–4, and, on the institution of levirate marriage, also Dtn 25,5–10.²² Looking at the context of these passages, we see that the domain of the family in general is of major interest to the laws of Deuteronomy.²³ Sexuality, marriage, and the legal status of the partners are regulated in great detail. However, a synoptic view of the laws reveals their primary intention to be that of regulating deviant behaviour; while a variety of possible problems is covered, a rule regulating the normal case of marriage is conspicuous by its absence. Nevertheless, the mar-

18 According to a broad scholarly consensus, the original law collection of the Covenant Code is a forerunner of Deuteronomy (for a general introduction, cf. SCHWIENHORST-SCHÖNBERGER, Bundesbuch, 3–37). In its present form, the Covenant Code is an expanded and Deuteronomistically revised version of this original law collection. Regarding the compositional context, cf. also HOUTMAN, Bundesbuch.

19 Cf. BAKER, Concubines, 88–92, WESTBROOK, Slave, and also PRESSLER, Wives.

20 On Dtn 22,15–16 cf. OTTO, Ethik, 27–28.

21 The text of the law collection in Dtn 12–26 is multilayered, and the bulk of material concerning matrimonial law probably does not belong to the oldest stratum (for an introduction to classical positions cf. PREUSS, Deuteronomium; for a stratification of the marriage laws in Deuteronomy cf. the table *ibid.*, 56–58). For this study, it will suffice to differentiate between pre-Deuteronomistic legal material and material added in the course of the Deuteronomistic redaction of the book, beginning in the exilic era.

22 Cf. OTTO, Ehe, 1071; on Dtn 22,13–29 cf. ROTHENBUSCH, Rechtssätze, 153–212.

23 For a consideration of possible historical backgrounds of this orientation towards family laws cf. CRÜSEMANN, Tora, 301–302.

riage and family laws of Deuteronomy mark a clear break with older legal conventions in Israel.²⁴ Hitherto, questions concerning the domain of the family were regulated exclusively within the family, in other words: by the *pater familias* (cf. Ex 22,15–16). In the Deuteronomic law, however, family matters are made subject to the rule of law within the local community.²⁵ The intention seems to be to provide legal security for those whose role within patriarchal society is subordinate.²⁶

Finally, a third major source of explicit stipulations concerning marital relations is found in Leviticus, chapters 18 and 20. These passages are part of the so-called Holiness Code (Lev 17–26), which belongs to the priestly material in the Pentateuch. Since these texts are primarily concerned with the distinction between what is fitting and what is not, we find relevant material there for our discussion when it comes to choice of a partner for marriage. It should be noted that the laws of the Holiness Code differ from the laws of the Covenant Code and in Deuteronomy, insofar as the latter collections intend to regulate societal law *sensu stricto*, while the Holiness Code is concerned more with what might be called religious law. Therefore we shall use the laws of the Holiness Code with due caution. However, to insist on a clear distinction between matters of society and matters of religion when studying a literary corpus from the ancient Near East would be a methodological anachronism.

1.4 Basics of Marriage in Pentateuchal Law and Narrative

The above mentioned law collections, in combination with “indirect” sources presenting cases of practice, allow us to reconstruct the basics of marriage in ancient Israel as it is portrayed in the Pentateuch.²⁷ As we have already seen, there is no word for “marriage” in the Pentateuch, nor do we find an equivalent for the verb “to marry.”²⁸ Instead, one merely stated “X took Y,”²⁹ X being the groom. Accordingly, “husband” in Hebrew is “owner” (בעל), while “wife”

24 Cf. *ibid.*, 291–304, esp. 295.

25 On the institutional organization of jurisdiction according to Deuteronomy cf. GERTZ, Gerichtsorganisation.

26 This aspect is highlighted by CRÜSEMANN, *Tora*, 298–299, in his discussion of the case of the so-called slandered bride; but cf. also GERTZ, *Gerichtsorganisation*, 173–225. On the case of the slandered bride, cf. further the recent study by WELLS, *Sex*, analyzing Dtn 19,16–21 (cf. *IDEM*, *Law of Testimony*, 144–147), and esp. PRESSLER, *View*, 93–94.

27 For a helpful survey of older research cf. BURROWS, *Basis*.

28 On the usage of the root נשא cf. the following note.

29 The Hebrew לקח, “to take” (with or without the preposition ל and “as wife;” cf. e.g. Gen 4,19; 11,19; 12,19; Ex 2,1), was substituted in later texts (cf. e.g. Ruth 1,4; esr 9,2.12; Neh 13,25; 2 Chr 13,21; 24,3) by the verb נשא qal, “to lift, carry,” which does take on a semantically similar meaning in other contexts as well (cf. Jes 57,13).

(בעלת-בעל) literally means “she who is possessed by an owner” (see e.g. Dtn 22,22).³⁰

Since marriage usually took place at an early age, it is understood that the partners were not acting independently, as reflected in such phrases as “A took Y for X” or “B gave Y to X” (cf. e.g. Dtn 22,16). In the normal case, which is vividly reflected in the story of Dinah and Shechem according to Gen 34, the groom or his father asked the father of the bride for her hand.³¹ If he agreed,³² the groom paid the so-called “bride price” (Hebr. מֶהֶר; Gen 34,12; cf. Ex 22,15). What exactly is meant by bride price is much disputed,³³ but at least how it functioned in the process of marriage is clear from our sources: The handing-over of the bride price brings about the engagement (expressed by the verb אָרַשׁ pi.), which precedes the marriage proper (see e.g. Dtn 22,23; Ex 22,15).³⁴

As we learn from these regulations, getting married involved two consecutive stages: In the first stage, or inchoate marriage, man and woman already belong to each other, but the marriage is as yet unconsummated. The legal perspective of inchoate marriage, therefore, is towards the outside. This can be seen from the law concerning the engaged woman in Dtn 22,23–27:³⁵ an engaged woman is already obligated to marital fidelity; infidelity on her part or rape is deemed to be adultery. The second stage following inchoate marriage is the actual marriage, which commences when the husband takes home his wife and she moves in with him.³⁶

2. Aspects of Matrimonial Law in the Pentateuch

Against this background, we shall now take a closer look at the pentateuchal sources with regard to three selected aspects of matrimonial law. These aspects are: First, monogamy and the possibility of polygamy; second, balancing endogamy and exogamy; third, the societal presupposition of patriarchy. As we turn to the Pentateuch out of an interest in present-day discussions of matrimonial religious law, these aspects are selected on account of their bearing on

30 On matrimonial terminology cf. also FRIEDL, Polygynie, 150.

31 For further examples cf. Gen 24; 29,18–30.

32 FRIEDL, Polygynie, 150, however, remarks with regard to Gen 24,57–58: “Obwohl die Frau sprachlich Objekt der Handlung ist, kann die Verheiratung ihr Mitspracherecht einschließen.”

33 Koschaker’s interpretation of the practice in terms of a purchase (“Kaufehe”), while momentous, has been refuted by more recent research (cf. OTTO, Ethik, 51–54, and also FRIEDL, Polygynie, 151–152).

34 Cf. further Dtn 20,7; 28,30; 2 Sam 3,14; Hos 2,21–22.

35 On this passage cf. also OTTO, Eherecht, 172–191.

36 Despite the absence of religious rites in this context, marriage is regarded a divine institution in ancient Israel, as SCHARBERT, Ehe, 311–313, contends with regard to Gen 1,27; 2,21–24, Ex 20,14; Dtn 5,18 (cf. Gen 20,9); Lev 20,10; Dtn 22,22.

contemporary cultural practice and their relevance to understanding the underlying social construction of gender.

2.1 Monogamy and the Possibility of Polygamy

The question of monogamy and polygamy, the first of the three aspects, is probably the least interesting for matrimonial law in most contemporary societies; however, it is of great significance for understanding the gender roles in its background. At first glance, the Pentateuch seems to present a unanimous front: One man may have more than one woman. Polygamy – or, to be exact, polygyny – is lawful.³⁷ Evidence is furnished e.g. by the law given in Dtn 21,15–17: The prohibition to disregard the right of primogeniture in order to privilege the son of the “loved” wife makes sense only if polygyny is a known practice.³⁸

Yet reading between the lines of the great pentateuchal narratives, this seemingly obvious result calls for modification. On the one hand, the legal option is corroborated by certain cases of polygyny of which we learn, first and foremost, in the patriarchal narratives in Genesis: Abraham (Gen 16,1–16; 25,1–6), his brother Nahor (Gen 22,20–24), and Abraham’s grandsons Jacob (Gen 29,21–30; 30,1–13) and Esau (Gen 26,34; 28,6–9; 36,2–3) are among the most prominent examples of Israelites living in marital or quasi-marital relationships with more than one woman at a time.

The same patriarchal narratives, however, point to a certain motive for such relationships. When Abraham takes Hagar in addition to Sarah (Gen 16,1–16), he does so only because his wife is barren. For the exact same reason, Rachel gives her maid Bilhah to Jacob (Gen 30,1–8). To be sure, these cases are not to be seen as belonging to the same category of marriages as the marriages of Abraham with Sara and Jacob with Rachel. Neither Hagar nor Bilhah seem to enjoy the same wifely status as Sara or Rachel; rather their status is lower (cf. Gen 16,5–6.8; 17,15; 18,9; 21,10–13; 23,19; 25,6.12, and Gen 31,33.50; 32,23).³⁹ However, these cases of quasi-marital relationships alert us to the rationale behind the practice of having more than one wife, chiefly the need for every family to produce a male heir. A male heir is necessary to continue the genealogy, which includes not only the handing-on of the status of the father and the property of the household,⁴⁰ but also what may be called the “spiritual survival” of the family.⁴¹ This rationale, which also finds clear expression in

37 For a comprehensive discussion cf. FRIEDL, Polygynie, 156–272.

38 Cf. also HAGEDORN, Moses, 202.

39 For a differentiation between the respective status of marital and quasi-marital relationships cf. the case study of BAKER, Concubines.

40 On the socio-historical background cf. MALUL, ⁶Āqēb, and IDEM, Society, 133–150.

41 Cf. OTTO, Ethik, 50: “Am Überleben der Familie, der Verhinderung ihres Aussterbens, hängt in der Antike das Schicksal eines jeden Familienmitgliedes über den Tod hinaus. Der Mensch bes-

the institution of levirate marriage (see Dtn 25,5–10), seems an important, if not the most important, reason for polygyny in ancient Israel as portrayed by the Pentateuch.⁴² As a means of guaranteeing the continuation of the family line despite frustrated efforts at conventional procreation in a monogamous marriage, an Israelite would take, and would be allowed to take, another wife in addition to the barren one.

These considerations yield two conclusions: First, despite its prevalence in pentateuchal law and narrative, polygyny is not portrayed as the norm but the exception.⁴³ Second, marriage as a social institution is largely determined by value interests in a broader sense.

2.2 Balancing Endogamy and Exogamy

The second aspect we wish to examine is this: Who is a legitimate partner in marriage according to matrimonial law and practice in the Pentateuch? The question has two sides: Who is too closely related to be married, and who is too alien? In contemporary religious practice, the latter issue is discussed under the rubric of “intermarriage.”

Interestingly, the pentateuchal law collections pay only modest attention at least to the second side of the question. Since evidence is hard to come by, we shall first examine some examples from the narratives before turning to the legal material. Again, the story of Jacob’s sojourn with his uncle Laban (Gen 29–31) supplies some crucial insights. While in the original version of the narrative Jacob leaves his father’s house to escape his brother Esau’s revenge for his act of betrayal, in the present composition of the cycle (which we owe to priestly redactors), Jacob is sent to Haran in order to find a suitable wife.⁴⁴ The prevalent understanding of a legitimate partner becomes cogent when we

teht aus einem physischen und einem sozialen Ich, das in die genealogisch strukturierten Gemeinschaftsbezüge eingebettet ist. Nur das physische Ich kann sterben, während das soziale Ich über den Tod hinaus im Groß-Ich der Familie weiterlebt.”

42 But cf. also the aspects stressed by HAGEDORN, *Moses*, 201–211, 239, in his discussion of Dtn 21,15–17.

43 Further arguments which have been advanced in favor of the ideal of monogamous marriage are discussed in EPSTEIN, *Marriage Laws*, 3–6, HAMILTON, *Marriage*, 565, and FRIEDL, *Polygynie*, 156–157. That both versions of the Decalogue speak of the wife in the singular (Ex 20,17; Dtn 5,21), as has been stressed sometimes, can hardly serve as a valid argument in favor of monogamy (cf. the respective contexts). Another argument claims that in the era of primeval history a critical undertone towards the practice of polygamy is discernible. The only case of polygamy reported there (Gen 4,23) is ascribed to Lamech, who is not exactly a gentleman. Finally, we have Gen 2,24. This verse does, of course, not make an explicit statement against polygamy. Yet a certain pathos deriving from an idea of a partnership based on mutual understanding between man and woman is surely there to be recognized – and not only by later recipients (cf. COLLINS, *Marriage*, 127).

44 On the composition of the cycle cf. BLUM, *Komplexität*, and cf. more recently KRAUSE, *Tradition*.

compare the marriages of the twin brothers: Esau had earlier married Hittite women (Gen 26,34–35) who were rejected by his parents. The bitterness these alien women cause especially to Rebecca is the motive for Isaac forbidding Jacob to marry a local, i. e. a Canaanite, woman (Gen 28,1) and sending him off to his wife's relatives.⁴⁵ When Jacob decides to marry Rachel, he is striving not only for a suitable, but for the best possible partner: He actually realizes the ideal of so-called "cross-cousin marriage," which holds that the perfect partner is a direct descendant of the parents' siblings.⁴⁶ Thus, to employ a technical term, endogamy within the normal lineage⁴⁷ of relatives was favoured according to the Pentateuch.

Yet cross-cousin marriage is portrayed rather as a "social standard" than "binding law,"⁴⁸ which is evident from the many cases of marriage which did not abide by this ideal. Moses had both a Midianite (Ex 2,21) and a Cushite wife (Num 12,1), which is reported without any apology, and two sons of Jacob, Judah and Simeon, even married Canaanite women (Gen 38,2; 46,10).⁴⁹

Much stricter the Israelites were, at least as portrayed in the Pentateuch, in handling the other question: Not marrying a person too closely related. Incest, i. e. marriage with a descendant of one's own parents, seems to have been avoided much more scrupulously than marriage with strangers. Therefore, with regard to the actual family exogamy was considered an austere obligation.⁵⁰ Exceptions to this rule are very rare.⁵¹

Thus we can conclude from the great pentateuchal narratives that in terms of the core family, exogamy was strictly enforced, while endogamy within the normal lineage of one's wider relations remained a cherished ideal. Turning to the great law collections, this picture is confirmed. What we have by way of explicit statement is, first of all, a detailed list ruling out incest in the Holiness Code (Lev 18,7–18), which confirms that exogamy within the family was not negotiable.⁵²

45 Learning of this, Esau takes further wives who are closer relatives than the women he married earlier (Gen 28,9).

46 Cf. further Gen 24 and Num 36. The latter text shows an "ideale [...] Szene" (LANG/KIRCHSCHLÄGER, *Ehe*, 476): The daughters of Zelophehad are allowed to marry within the family of their father. Here we also gain insight into the rationale behind this ideal: The ancestral inheritance is not to be allowed to pass to another lineage.

47 On differentiating the concept of a family from related concepts with regard to social legislation cf. KESSLER, *Sozialgeschichte*, 59.

48 Thus EPSTEIN, *Marriage Laws*, 150.

49 Cf. also Gen 41,45.

50 For a classical study of the issue from the stance of cultural history cf. LÉVI-STRAUSS, *Strukturen*.

51 The most prominent exception is the marriage of Abraham and Sara according to Gen 20,12 (cf. Lev 18,9; 27,22; cf. further Ex 6,20 and Lev 18,14).

52 Lev 18,7–18 clearly defines the realm of the core family, within which sexual relations are sanctioned by the taboo of incest: Four generations are explicitly taken into consideration, thus accounting for all possibilities of relations with one's own forebears.

Yet if we seek explicit legal support for the ideal of endogamy within the normal lineage, evidence in our sources is scant. In the Holiness Code, two entire chapters are given over to sexual taboos (Lev 18; 20). Intermarriage is not listed among them, however. On the contrary, in Deuteronomy we actually find laws presupposing it was lawful to marry strangers: Dtn 21,10–14 allows the Israelite soldier to marry a prisoner of war.

To be sure, we do find a strict prohibition in Deuteronomy against marrying women from the peoples of the land of Canaan (Dtn 7,1–5).⁵³ Yet this prohibition does not belong to the pre-exilic core of the law collection. It stems from a Deuteronomistic redaction of the book of Deuteronomy which propagated an ideology demanding complete annihilation of these peoples from the land (cf. Dtn 20,16–18 and *passim*).⁵⁴ In the context of such theology, a prohibition like the one found in Dtn 7,1–5 is only to be expected. Deuteronomy here deals with principal questions of theology and ideology, not with matrimonial law. Therefore, Deuteronomy's ban on marrying women of the peoples of the land cannot be used as an argument by analogy against marriage with foreign women in general.⁵⁵

Summarizing, then, our observations from pentateuchal law and narrative, we see that despite the cherished ideal of marriage within one's wider relations, intermarriage with partners from other nations and religions was deemed a minor matter. The tide only turns with the reforms related in the books of Ezra and Nehemiah.⁵⁶

2.3 The Societal Presupposition of Patriarchy

Having observed that exogamy within the actual family was deemed a strict obligation, it necessarily follows that a newlywed couple could settle either in the place of her relatives or in that of his relatives. In technical terms, the choice is between matrilocal or patrilocal residence. According to pentateuchal law and narrative, patrilocal residence is the norm. This norm points to the societal presupposition of both aspects of matrimonial law discussed so

53 Cf. Ex 34,15–16.

54 For a stratification of the law set out in Dtn 20,16–18 cf. PREUSS, *Deuteronomium*, 55.

55 The less so, as there is reason to assume that at least some of the abhorred aliens referred to in passages like Dtn 7,1–5 might in fact not have been so alien after all; cf. e.g. RÖMER, *Deuteronomistic History*, 170–172, and KNAUF, *Josua*, 28. Yet this is not our question at present as we deal with the textual fiction established by the Deuteronomists and its reception.

56 Cf. esp. ESR 9–10; NEH 13,23–27 (cf. also NEH 9,2; 10,30–31; 13,3). The contemporaneous spokesmen against intermarriage apparently claimed to base their case on the Pentateuch (cf. FISHBANE, *Biblical Interpretation*, 114–129, and GRÄTZ, *Second Temple*, 273–277). But in truth they were reading their views into it. Together with the rigidity in matters of cultural politics under Ezra, we observe a tendency towards a theological interpretation of intermarriage (cf. CRÜSEMANN, *Tora*, 344). On this problem cf. also MAL 2,11 (cf. SCHREINER, *Mischehen*, 207–228).

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Gott schuf den Menschen „männlich und weiblich“. Religionswissenschaftler und Theologen aus acht Ländern gehen der Wirkungsgeschichte dieser Vorstellung nach, die dem Judentum, Christentum und Islam gemeinsam ist. Die Aufsätze behandeln die Auslegung der Vorstellung in den heiligen Schriften der drei Religionen, von der Hebräischen Bibel über das Neue Testament, den Talmud und Koran bis zum kabbalistischen Schrifttum. Mit Beiträgen von L. Anteby-Yemini, P.Y. Balog, É. Chaumont, M. Frenkel, Y. Frenkel, M. Giorda, H.-P. Großhans, M. Khalfaoui, J.J. Krause, P. Laurence, A. Ofengenden, R.M. Parrinello, A. Klostergaard Petersen, R. Puza, E. Robberechts, S. Ruzer, F. Saquer-Sabin, S. Sinn, A. Wörn.

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