PART I

MONOGAMY

Introduction

As feminist studies began ransacking the Hebrew Bible and the related documents (e.g. rabbinic literature, New Testament, Dead Sea Scrolls), it soon became clear just how misleading it is to speak of *a* – much less of *the* – place of women in Israelite tradition. Yet most scholars concur that Israelite society was essentially patriarchal.[1] Now patriarchy is thought to be intolerant of polyandry but compatible with both polygyny and monogamy. Theoretically, then, being pro-monogamy does not make a text uxorious or matriarchal. However, it is not merely monogamy that Genesis 1 projects, but a playing field for spouses that is as level as any in the Bible. How influential was the Genesis 1 configuration, or did it begin and end with the first idyllic union? Put another way: off paper, can the paradisiac model hold up under patriarchy? It is easy to be sceptical. But even if the hope of finding equality is a lost cause, might there not be shades of inequality?

[1] Designating Israelite society patriarchal is not meant to imply that Israel was exceptional or that her neighbours are known to have been matriarchal. Indeed, some writers pooh-pooh the historicity of what were once touted as vestiges of matriarchies: "Patriarchy is universal … theories that hypothesized a matriarchal form of society at 'an earlier stage of history' made a certain, if tortuous, sense until the findings of the past fifty years failed to include a single shred of evidence that such matriarchies ever existed, and demonstrated the inability of all such theories to deal with reality" (*Why Men Rule: A Theory of Male Dominance* by Steven Goldberg, Chicago and La Salle 1993, pp. 15, 18).

Étan Levine has this to say in his article "Biblical Women's Marital Rights":[2]

In general terms, biblical families are indeed identical to those most characteristic of the ancient Near East. They are: (1) Endogamous (with preference for marriage with relatives); (2) Patrilineal (with descent according to the father's lineage); (3) Patriarchal (with the father as family master); (4) Patrilocal (with the bride brought to the place and family of the groom); (5) Extended (not limited to one generation or one pair-unit; (6) Polygynous (a man may have more than one wife). Nevertheless, despite the pervasive male supremacy in biblical society, cultural anthropologists have clearly documented how the *a priori* dismissal of all polygamous societies as *equally* and *identically* exploitative of women is both near-sighted and culture-bound. And some Biblical laws do attempt to ameliorate the precarious and subservient status of women.

Just so. One might simply add that polygyny itself, though pervasive, need not have been ubiquitous.

Undeniably the sacred texts under consideration, in the main, condone polygyny. In the main – but not downright. Malachi almost certainly conceives of wedlock as an infrangible covenant between husband and wife.[3] Then there is the primordial couple, monogamous to the hilt, as already noted in both creation stories. True, these desultory avowals of monogamy do not exactly yell at us from the pages of the Bible. But even if they whisper, no polygynous roar can drown them. Moreover, some ancient Jews were attuned to an additional text that, to their ears, bellowed forth monogamy. The Jews in question are the authors of the Dead Sea Scrolls, and the text Leviticus 18:18. That

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[2] *Proceedings of the American Academy for Jewish Research*, vol. LXlll, 1997–2001, pp. 88–89.

[3] As argued most persuasively by Gordon Paul Hugenberger (*Marriage as a Covenant: A Study of Biblical Law and Ethics Governing Marriage Developed from the Perspective of Malachi*, Leiden & New York 1994). Responding to the objection that biblical marriage could not possibly be a covenant because it is only the wife's exclusive loyalty that the Bible demands, not the husband's, Hugenberger makes the following critical observation: "After examination of the alleged examples of indifference, it was determined that there are, in fact, no texts which condone a husband's sexual infidelity. On the contrary, several texts including Job 31:1; Hos 4:14; and especially Prv 5:15–23 make clear that whether or not there was a *legal* obligation, there was definitely a *moral* obligation for exclusive sexual fidelity on the part of a husband" (p. 343). One might also consider Hos 3:3, assuming *ve-gam ani elayikh* to have reciprocal fidelity in mind. Cf. the treatment of both the Hosea and Malachi verses by Edward Geoffrey Parrinder in his 1950 pamphlet, *The Bible and Polygamy: A Study of the Hebrew and Christian Teaching*, pp. 29–35.

both Genesis 1 and the Book of Leviticus are assigned by scholarship to the priestly source of the Pentateuch (hereafter P)[4] is no fluke. If anything, the monogamous bent of these two scriptures dovetails rather neatly with other teachings of P, notably those relating to levirate-marriage, to which justice will be done shortly. Meanwhile, by way of appetizer, one may munch on the Talmud's periodic reservations about levirate-marriage.[5] Could they be a throwback to P's distaste for that institution?

Not all contemporary writers on Jewish feminism dwell on the history of monogamy. Some seem content to dismiss the subject with the statement that Rabbenu Gershom (d. around 1028)[6] banned polygyny a thousand years ago.[7] Today, in light of the Dead Sea Scrolls,

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[4] The nomenclature is somewhat confusing. The ancient name of the third book of Moses was *TORAT KOHANIM* (the Torah of the Priests *or* the Priestly Torah). The siglum P of Bible criticism is used to designate texts throughout the Pentateuch that conform to the distinctive characteristics of the Priestly Torah. Most critics recognize Leviticus 17–26 as a component differing enough from the rest of P to merit its own designation: the Holiness Code or H. For our purposes, however, we use P comprehensively to include H.

[5] E.g. "Abba Saul says whoever performs the levirate act [with his widowed sister-in-law] for the sake of [her] beauty or for the sake of conjugal relations [var. or for any other ulterior motive] it is as if he violated the incest law [of Lev 18:16] and the child [born from such a union] is in my eyes close to being illegitimate" (Yev. 39b; cf. T. Yev. 6:10 which has "[her] property" in place of "conjugal relations"); also M. Bekh. 1:7; Tos. Shab. 118b s.v. *ema*; Gen. Rab. 85:6.

[6] The ascription of the *taqqanah* prohibiting polygyny to the historical Rabbenu Gershom has been questioned. Peretz Tishby (*Tarbiz* 34 [1965] pp. 49–55 [English summary pp. IV–V]) favours a 12th-century date for the *taqqanah*'s formal promulgation.

[7] For some writers, Jewish Law means rabbinic law. This may explain how come a work as thorough as *Women and Jewish Law* can claim: "Though it seems that polygyny was not practiced in the postbiblical period it remains very significant that it was halakhically acceptable. This changed in the middle ages for those Jews living in Christian countries.… By the ninth and tenth centuries the aversion to polygyny began to take the form of prohibitions set in community practice and rules (takanot). Traditionally, the definitive order against polygyny is attributed to Rabbenu Gershom Me'or Ha-Golah …" (*Women and Jewish Law*: *The Essential Texts, Their History, & Their Relevance for Today* by Rachel Biale, New York 1995, p. 50). A similarly myopic view of 'Jewish law' mars another otherwise excellent study. Commenting on the saying of Jesus (Mark 10:11; Luke 16:18) that "Whoever divorces his wife and marries another commits adultery", Gordon J. Wenham writes: "There are three very striking novelties about this remark of Jesus to the husband who divorces. First, he says a man can commit adultery against his own wife. Under Jewish law a man was guilty of adultery if he took someone else's wife.… Second, this statement effectively forbids polygamy, also practised by Jews until 1948 (Western Jews stopped in 1030). This is because if a second union *after* divorce constitutes adultery, then *a fortiori* second

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R. Gershom's ban pales, for his ban was neither absolute nor did it invoke the Law of Moses, and its success has been correspondingly patchy and inconclusive (witness the husbands of *agunot* who abscond and remarry). In Qumran halakhah, on the other hand, having two wives was considered fornication (see further). Qumran thus shoves monogamy under the nose of every student of gender relations.

A society where polygyny is abnegated – if only by one sect among many – is not the same as the one where polygyny goes unquestioned. The Qumran community, even if it lived sequestered, did not hide its ideas under a bushel. Still, the Scrolls' insistence on monogamy has no counterpart in rabbinic literature.[8] This means that the rabbis were not reading the relevant Scriptures in the same way as the authors of the Scrolls. So how were they each reading those Scriptures? And what are the prospects of sizing up the two – rabbinic and Qumranic – traditions? Let us find out.

unions before divorce … must be adulterous too." (*Jesus and Divorce*, London 2002, p. 48). Both authors fail to mention a non-rabbinic halakhah that banned polygyny a millenium earlier (see Chapter 5, note 7).

[8] At least nothing overt. On the other hand, a saying attributed to R. Aqiva seems to imply disavowal of polygyny: "R. Aqiva says [he may divorce his wife] even if his reason is that he has found a woman more beautiful than she" (M. Git. 9:10). Now in a polygynous society, the newly discovered belle might just as easily join the harem as break up the existing partnership. In proposing divorce as the remedy, R. Aqiva all but discounts the polygynous option. Cf. "A man who was married for ten years and his wife bore no children they [the authorities] compel him to divorce" (Ket. 77a and Rashi s.v. *litne nasa ishah ve-shahah*); also the aggadah that depicts Moses as a magistrate taking seriously a wife's charge of unfaithfulness against her husband (Yom. 75a). For additional examples, see Adiel Schremer's *Male and Female He Created Them* [Heb.], Jerusalem 2003, pp. 210–218.

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The Sources

The Damascus Covenant (hereafter CD)[1] may be thought of as the constitution of the community which embraced it. CD outlaws polygyny on Pentateuchal authority and blasts those who permit it:

The builders of the partition (**bone ha-ḥayiṣ**)[2] who go after *ṣav* – the *ṣav* is the preacher of whom it is said [Mic 2:6] Assuredly they shall preach – they are

[1] CD (or, more formally: CDC) stands for Cairo Damascus Document, the designation given the medieval Cairo Genizah exemplars discovered and then published by Solomon Schechter as *Documents of Jewish Sectaries*, vol. 1: *Fragments of a Zadokite Work*, Cambridge 1910 (New York 1970). Ten ancient copies of basically the same text (ranging from partial to fragmentary) have turned up in caves 4, 5 and 6 at Qumran. The eight from cave 4 were published, with English translation by Joseph M. Baumgarten, in *Discoveries in the Judaean Desert XVIII The Damascus Document* (4Q 266–273) Oxford 1996; also with English translation by James H. Charlesworth, editor, and Henry W. M. Rietz, assistant editor, in volume 3 of the series *The Dead Sea Scrolls Hebrew, Aramaic and Greek Texts* Tübingen 2006. The remaining two (5Q 12 and 6Q 15) appeared in volume 2 of the same series, Tübingen 1995. Except for the smidgen in 4Q266, none preserves any portion of text paralleling 4:19–5:2.

[2] As to the identity of **bone ha-ḥayiṣ** (often rendered 'builders of the wall'), we cite Adiel Schremer's synopsis: "While some scholars have identified the 'builders of the wall' with the Pharisees, others viewed this appellation as referring to the Jewish society of the author's time in general. On the first possibility, see: S. Schechter … 1910; R. H. Charles … 1913; J. Grintz … 1953; A. S. van der Woude … 1957; J. Tomson … 1990. The other view is held by J. Murphy-O'Connor … 1970; P. R. Davies 1983; M. A. Knibb … 1987; J. G. Campbell … 1995." ("Qumran Polemic on Marital Law: CD 4:20–5:11 and its Social Background" in *The Damascus Document A Centennial of Discovery: Proceedings of the Third International Symposium of the Orion Center for the Study of the DSS and Associated Literature*, Leiden 2000, p. 147 note 1). Recently, Ben Zion Wacholder has declared himself in the Schechter-Charles camp: "Drawing on these biblical prophecies, MTA [Midrash Torah of the Apocalypse; alias CD or,

caught twice in fornication by taking two wives in their lives; also the princi-
ple of creation is [Gen 1:27] Male and female He created them, and those who
entered the ark [Gen 7:9] Two by two did they enter the ark. And regarding
the prince it is written [Dt 17:17] He shall not multiply wives to himself (CD
4:19–5:2)

Now the phrase 'by taking two wives in their lives' (**laqaḥat shete
nashim be-ḥayyehem**)[3] unmistakably echoes Lev 18:18: "**ve-ishah el
aḥotah lo tiqaḥ liṣror legallot 'ervatah 'alehah be-ḥayyehah**" (literally:
And a wife [*or* a woman] to her sister you shall not take [in marriage]
to cause rivalry to uncover her nakedness upon her in her lifetime).
It also seems clear that of the four scriptural texts adduced, it is Lev
18:18 that CD treats as the clincher, with the Genesis and Deuteronomy
verses serving as back-up. In other words, it all hinges on the Leviticus
verse, or rather on the way that verse is decoded. For Lev 18:18 is
cryptic. Hence, the dispute as to whether it means to ban polygyny
(CD) or else to prohibit the marriage of a man to a woman and her
biological sister (the builders of the partition who permit polygyny).
To be sure, CD's understanding of Lev 18:18 languished for umpteen
centuries, but that has not prevented scholars, Angelo Tosato amongst
them, from re-opening the case.

In 1984, Tosato published his article, "The Law of Leviticus 18:18: A
Reexamination".[4] By paying close attention to semantic and contex-
tual niceties, Tosato concluded that "the interpretation of Lev 18:18
given at Qumran has conserved faithfully … the original sense and
value of the biblical law". However, Tosato went on to shoot himself
in the foot by cluttering his case with dud arguments:

a law which forbids the marrying of two sisters (Lev 18:18 according to the
traditional interpretation) seems to find collocation.… But on closer exami-
nation … things turn out to be different. One cannot forget that Jacob-Israel

more precisely, Qumran – as distinct from Genizah – copies of CD] builds a case
against the current so-called builders of the wall who, pursuing their own measur-
ing standard in their edifications, spew false legislation. These are the Pharisees …"
(*The New Damascus Document The Midrash on the Eschatological Torah of the
DSS: Reconstruction, Translation and Commentary*, Leiden 2007, p. 189).

[3] The possessive pronominal suffix of **be-ḥayyehem** is masculine. This masculine suffix,
as Geza Vermes noted, "has given rise to the greatest amount of controversy". He
also succeeded in demonstrating that the masculine form notwithstanding, the refer-
ents of **be-ḥayyehem** are women, not men. ("Sectarian Matrimonial Halakhah in the
Damascus Rule" *JJS* 25:1, pp. 197–202).

[4] *CBQ* 46:2, pp. 199–214.

had at the same time two sisters as wives; that David probably married two daughters of Saul⁵.... It is hard to believe that such personages were made into breakers of the Law on account of incest ... (pp. 211–212)

Such paralogism provided fodder even for the most equitable of critics, such as Calum M. Carmichael:

I do not accept the view of Angelo Tosato that this rule has been properly interpreted by the Dead Sea Community.... I agree with Tosato that we should not introduce the notion of incest into this rule – a major part of his argument – but his interpretation that the rule is a general prohibition of bigamy still does not follow. He finds himself in considerable difficulty when he argues against the usual view that the rule is about two sisters. Thus he comments "One cannot forget that Jacob-Israel had at the same time two sisters as wives […]". One wonders what Tosato would have to say about Abraham's marriage to Sarah in light of the Levitical prohibition against that incestuous union, and also about Moses' rule in Lev 18:12, 13 legislating against the union his parents contracted. ⁶

While agreeing with Carmichael as to the ineptitude of the patriarchal marriages, one still wants to beware of throwing out the baby with the bathwater. In this instance, we must confess to a vested interest in the 'baby'. Long fascinated by the ancient Lev 18:18 dispute, we set out to investigate. The philological voyage was bumpy, the literary road circuitous;⁷ but in the end the odyssey brought us close to Tosato's basic position. What follows next may be described as a distillation of our travelogue.

Analysis of Lev 18:18

The first five words of the verse **ve-ishah el aḥotah lo tiqaḥ** constitute a formidable crux. Literally, of course, **ishah** means woman (or wife) and **aḥot** sister. Going with those literal meanings, what the verse

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⁵ See 1Sam 18:17–21. For the rabbis who understood Lev 18:18 to prohibit a man marrying two sisters, David's case did indeed pose a quandary. "His students asked R. Yose 'How could David marry his wife's sister?' He replied 'Only after Merab's death did he marry her sister'" (T. Sot. 11:9; cf. San. 19b). Modern scholarship, on the other hand, tends to skirt the issue by positing not two sisters but a double recension of a single story that knew simply of David's marriage to a daughter of Saul (see Henry Preserved Smith, *ICC on The Books of Samuel*, Edinburgh 1899 [1969], p. 172).

⁶ *Law, Legend and Incest in the Bible: Leviticus18–20* Ithaca, NY 1997, pp. 46–47.

⁷ And all without the benefit of belatedly discovered Tosato!

forbids is the taking of two biological sisters as wives. CD, however, takes the phrase **ishah el aḥotah** in its only attested sense: metaphorically. The phrase occurs another eight times:

1) Five of the strips of cloth shall be joined **ishah el aḥotah** (flush with one another; Ex 26:3)
2) and the [other] five strips of cloth shall be joined **ishah el aḥotah** (flush with one another; Ex 26:3)
3) the loops shall line up each **ishah el aḥotah** (opposite its counterpart; Ex 26:5)
4) you shall join the cloths **ishah el aḥotah**(flush with one another) by means of the clasps (Ex 26:6)
5) Two tenons for each plank in alignment[8] **ishah el aḥotah** (with each other; Ex 26:17)
6) Each one's wings touched tip to tip[9] **isha el aḥotah** (those of the other; Ezek 1:9)
7) Under the vault their wings were spread straight out **ishah el aḥotah** (touching one another; Ezek 1:23)
8) the sound [*or* noise] of the living creatures' wings brushing **ishah el aḥotah** (against one another; Ezek 3:13).

In all eight examples, the phrase is used idiomatically to signify a relationship of symmetry or congruity between two objects or sets of objects. Neither the **ishah** nor her **aḥot** are ever people. For conformity's sake, Lev 18's **ishah el aḥotah** ought therefore to mean something like 'both in tandem'. With that in mind, let us try to reconstruct a plausible sense that CD might have extracted from our verse. The key word would probably have been **liṣror,** qualified by the **ishah** idiom. Such a reading might, in turn, yield an overall construction like this: *Do not take rival wives either together or even successively as long as the first wife is alive.* At this juncture, it will be useful to tabulate the ramifications of a metaphorical reading of **ishah el aḥotah** in Lev 18:18. Although we cannot speak for the authors of CD, there can be no doubt as to the relevance of the following considerations to any monogamist reading of the verse.

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[8] Heb. *meshullavot*. This hapax legomenon is most likely a carpentry term describing the tenons' compatibility with their answering mortises (see Jastrow's Dictionary, p. 1577). JPS notes "meaning of Heb. *meshullavot* uncertain".

[9] 'Tip to tip' is speculative but gives the general drift which seems to be this: Each angel's right-hand wing meets with the left wing of its neighbour to the right in regimented formation.

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Pro-CD Arguments

1) Besides its basic meanings (bind, constrict, show hostility, vex), Hebrew *ṣrr* can also denote the act of 'rivalling' or being a rival. Thus *ṣrr*'s derivative noun *ṣrh* (pl. *ṣrt*), like its Akkadian cognate *ṣerretu*,[1] stands for 'rival' – particularly a rival-wife (see 1Sam 1:6; M. Yev. 1.1 and *passim*). Accordingly, **liṣror** comes into its own if the focus of Lev 18:18 is rival wives. But if the focus is sisters, **liṣror** would seem otiose. Nor does it help that it is absent from the 'woman and her daughter' prohibition (18:17).

2) Verse 18 ends with the qualifying phrase **be-ḥayyehah** (in her lifetime), implying that with the wife's death, the union ceases to be unlawful. This provision is extraordinary; nowhere does Torah teach that affinity to one's spouse's kin dissolves with the spouse's death. As noted, the Talmud sided with the 'builders', taking the subject of Lev 18:18 to be biological sisters. Hence, rabbinic texts allow marriage to a deceased wife's sister. This exceptional leniency stands out like a sore thumb, as Maimonides's code will illustrate:

Once a person enters into matrimony with a woman six of her relatives become forbidden to him and each of the six remains in the category of **'ervah** for ever – whether or not the marriage is consummated; even after it ends in divorce; during his wife's lifetime and after her death. These are the six. Her mother, her maternal grandmother, her paternal grandmother, her daughter,

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[1] See *An Akkadian Lexicon Companion for Biblical Hebrew* by Hayim ben Yoseph Tawil, Jersey City, NJ 2009, p. 328.

her daughter's daughter and her son's daughter.… In addition, his wife's sister becomes **'ervah** to him until his wife dies. (*Yad*, Issure Bi'ah 2:7, 9)

For CD, on the other hand, Lev 18:18 does not deal with incest and therefore cannot be accused of breaking rank. If you like, it is already the odd man out insofar as polygyny is not a kinship issue. Thus on the congruity score, CD can be said to manage **be-ḥayyehah** better than its opponents. But the acid test will come further in this book, when CD's own understanding of **be-ḥayyehah** faces the music.

2a) As just noted, v. 18's **be-ḥayyehah** proviso is unparalleled throughout the incest laws. Its singularity stands out sharpest when juxtaposed with v. 16 which prohibits a union between a man and his brother's wife. That prohibition is not said to lapse at the brother's death. So if a woman is barred from marrying her husband's brother – even after her husband's death – why should a man be at liberty to marry his wife's sister after his wife's death? This question simply underscores the previous pro-CD argument (2 above); and like that argument, CD's opponents cannot permit it to go unanswered. Some of them attribute the leniency to the fact that, seen from the text's androcentric perspective, a wife's sister is outside the man's paternal family, whereas Lev 18 allegedly considers a man closest to his father and, by extension, to his father's kin. In defence of this theory, they cite two lopsided categories of incest, namely aunts by marriage and parents-in-law. Union between a man and the wife of his father's brother is prohibited (v. 14) but not between a man and the wife of his mother's brother. Similarly, union between a father-in-law and his daughter-in-law is prohibited (v. 15) but not between a mother-in-law and her son-in-law. What could account for so glaring a discrepancy, they argue, except the non-agnate affinity of mother-in-law and maternal aunt-in-law?

Needless to say, the induction of a general principle from this laconicism would be speculative, especially in view of the reciprocity of Lev 18's other laws. For instance, Lev 18 equates the maternal aunt (v. 13) with the paternal one (v. 14). It also equates a half-sister by the father with a half-sister by the mother (v. 9). Admittedly, the Scribes are credited by some late sources to have judged siblings born of the same father closer to one another than siblings born to the same mother, for the second-degree-incest unions (*sheniyyot*) outlawed by the Scribes