

## BIBLICAL LAW IN GRECO-ROMAN ATTIRE: THE CASE OF LEVIRATE MARRIAGE IN LATE ANTIQUE CHRISTIAN LEGAL TRADITIONS

YIFAT MONNICKENDAM

Senior Lecturer, the Department of Jewish History, Tel Aviv University

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### ABSTRACT

What happened to biblical law when transferred into late antique Christianity? How can answering this question provide a paradigm that helps us understand the rise and development of late antique Christian legal traditions? In the first centuries of the Common Era, the Christian legal tradition began to evolve in Roman, Greek, rabbinic, and biblical contexts. Focusing on the biblical institution of levirate marriage, this article offers a paradigm that elucidates how Christians might have adopted, adapted, and sometimes rejected their legal heritage; it may illuminate the overall development of Christian legal discourse. Following a short survey of the rabbinic adaptation of biblical levirate marriage and the Roman and Christian rulings regarding this practice, I analyze the Christian exegetical and theological discourse on levirate marriage, focusing on the acceptance or rejection of levirate marriage as a whole and adaptations to the biblical institution. This analysis demonstrates the disparity between the rabbinic discourse, the Christian and Roman rulings, and the theological and exegetical discourse. It shows how Christians remodeled their biblical heritage according to Greek and Roman legal concepts, namely the Roman adoption and the Greek *epiklerate*, and treated it as part of inheritance law and child-parent relationships, whereas the rabbis used different adaptations and treated it as part of matrimonial law and sexual relationships. This discussion therefore recontextualizes the legal discourse, positioning the Christian approach to levirate marriage as a complex case of legal transplant and adaptation of a legal heritage.

**KEYWORDS:** Christian legal traditions, Roman law, Greek legal traditions, Talmud, halakha, adoption, *epiklerate*, levirate marriage, legal transplants

What happened to biblical law when it was transferred into the new world of late antiquity? How was it understood, and what were the reasons for this particular interpretation? Answering these questions can provide a paradigm to help explain the development of late antique Christian legal traditions and discourse in their Greco-Roman and Jewish contexts.

Accompanying the rise of Christianity in the first centuries of the Common Era, Christian legal discourse and traditions began to evolve. These embryonic legal traditions combined Roman law, Greek legal traditions, biblical law, and rabbinic halakha, interweaving them with their own ethical stances. Scholars tend to study the development of Christian legal traditions, especially matrimonial

law, from one of two perspectives: either in relation to Roman law, mainly focusing on Christian sources from the second century onward,<sup>1</sup> or in connection to biblical and early halakhic traditions, largely concentrating on the Old and New Testaments and Qumranic sources.<sup>2</sup> In this article, I seek to portray a less dichotomous and more nuanced picture of the Christian approach to biblical and Jewish legal traditions, on the one hand, and Roman and Greek legal traditions, on the other. I address the different ways in which Christians adapted a biblical legal institution by using legal concepts drawn from the Greco-Roman world, yet not directly taking part in the Greco-Roman legal discourse, and compare this phenomenon to the rabbis' understanding and alteration of this same biblical legal institution in the Tannaitic and Amoraic literature.

The case study I use in this article is levirate marriage—the obligatory marriage of a man to the widow of his deceased and childless brother. Levirate marriage is depicted in the Hebrew Bible and discussed in rabbinic halakha. Starting from the fourth century, Roman emperors and Bishops banned such marriage, together with sororate marriage (a man's marriage to the sister of his deceased wife), in a series of decrees and rulings. This ban has been explained in scholarship in three main ways: as a result of Christian influences and a response to Jewish levirate marriage;<sup>3</sup> as an independent prohibition unrelated to Jewish levirate marriage;<sup>4</sup> or as a response to other groups within the Roman Empire, rather than Jews alone.<sup>5</sup> Scholars addressing this issue have focused on Roman and early Christian legal literature but have not analyzed the inner-Christian understanding of biblical levirate marriage. In this article, by contrast, I seek to provide an analysis of the inner-Christian discourse on levirate marriage, dealing with not only the legal discourse and prohibitions but also the exegetical and theological discussions alluding to levirate marriage. From this expanded perspective, I endeavor to examine how levirate marriage is understood, molded, and structured in early Christian literature. This examination sheds light on the relationship between the inner-Christian discourse and the Roman and Christian legal discourse, and between the inner-Christian discourse and the rabbinic discourse. More widely, I offer a case study demonstrating how this biblical legal tradition was transplanted from its biblical origins to its new late antique setting.

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- 1 See, for example, Biondo Biondi, *Il diritto Romano Cristiano* [Roman Christian law] (Milan: Giuffrè, 1952–54); Jean Gaudemet, *Le droit Romain dans la littérature Chrétienne occidentale Du IIIe au Ve siècle* [Roman law in western Christian literature from the third to fifth centuries], *Ius Romanum Mediaevae* I, 3, b (Mediolani: Typis Giuffrè, 1978); and Judith Evans-Grubbs, *Law and Family in Late Antiquity: The Emperor Constantine's Marriage Legislation* (Oxford: Oxford University Press, 1999).
  - 2 See, for example, J. Duncan M. Derrett, *Law in the New Testament* (London: Darton, Longman & Todd, 1970); Ed Parish Sanders, *Paul, the Law and the Jewish People* (Philadelphia: Fortress Press, 1983); *Jewish Law from Jesus to the Mishnah* (London: SCM Press, 1990); David Instone-Brewer, *Divorce and Remarriage in the Bible: The Social and Literary Context* (Grand Rapids: Wm. B. Eerdmans, 2002). For a further bibliography, see the review by Peter J. Tomson, "Halakhah in the New Testament: A Research Overview," in *The New Testament and Rabbinic Literature*, ed. Reimund Bieringer, Florentino García Martínez, Didier Pollefeyt, and Peter J. Tomson, *Supplements to the Journal for the Study of Judaism* 136 (Leiden: Brill, 2010), 136–206.
  - 3 Jean Gaudemet, *L'église dans l'Empire Romain: IVe–Ve siècles* [The church in the Roman Empire: Fourth to fifth centuries], *Histoire du droit et des institutions de l'église en occident* 3 (Paris: Sirey, 1958), 527–28; Jack Goody, *The Development of the Family and Marriage in Europe* (Cambridge: Cambridge University Press, 1983), 60–62; Amnon Linder, *The Jews in Roman Imperial Legislation* (Detroit: Wayne State University Press, 1987), 191–93.
  - 4 Simon Corcoran, "The Sins of the Fathers: A Neglected Constitution of Diocletian on Incest," *Journal of Legal History* 21, no. 2 (2000): 1–34, at 13–15.
  - 5 Giovanni de Bonfils, *Gli schiavi degli ebrei nella legislazione del IV secol: Storia di un divieto* [The slaves of the Jews in fourth-century legislation: The history of a ban], *Pubblicazioni della facoltà giuridica dell'università di Bari* 103 (Bari: Cacucci, 1993), 148–54.

Most of the sources I employed for this article are not of a legal nature: they are not part of the so-called church orders, the councils, or early canonical literature. Nor do they claim to possess any normative authority, and in most cases do not address the question of levirate marriage directly, and do not make reference to its legal dimension. Rather, they refer to it as part of a theological, exegetical, or historical discourse, offering a picture different to that found in the Christian legal sources. As such, these sources provide a fresh perspective on how Christians understood levirate marriage, rather than on how they sought to rule, in early canonical literature regarding such marriage.<sup>6</sup>

Five main biblical contexts serve as the basis for the discussions of levirate marriage in late antique Christian literature: Jesus's genealogy and his relationship to Joseph the carpenter; the Sadducees' claims regarding resurrection of the dead; Herod's marriage and the execution of John the Baptist; the marriage of Ruth and Boaz; and the Deuteronomic levirate law. In these cases, the Christian writers follow the biblical description of levirate marriage yet adapt it to accord with Roman and Greek legal concepts with no indication of either acquaintance with, or polemic regarding, contemporaneous rabbinic halakha. Conversely, the Palestinian and Babylonian rabbis altered the biblical description of levirate marriage, minimizing its practice by implementing various halakhic and hermeneutical constructions.

I begin with a short survey of the late antique rabbinic adaptation of biblical levirate marriage and the Roman and Christian rulings regarding this practice. Against this backdrop, I analyze the approach to levirate marriage in the Christian commentaries on these five biblical settings, in comparison to rabbinic halakha, focusing on two themes: the acceptance or rejection of levirate marriage as a whole and the differences between the *biblical* levirate marriage and the *Christian* understanding of it in the late antique texts. This analysis highlights two phenomena. First, it reveals the difference between the Christian legal discourse and Roman rulings and the exegetical and theological discourse when addressing such a legal institution as levirate marriage. This difference highlights how Christian writers addressed and remodeled their biblical heritage in a Greco-Roman world. While the exegetical and theological discourse does not relate to the Roman prohibition on levirate marriage, this discourse utilizes other Roman and Greek legal concepts, namely adoption and the *epiklerate* (the system whereby an heiress with no siblings was required to marry a kinsman), to reshape its biblical heritage. Second, my analysis highlights the different ways in which the rabbis and the Christians addressed their biblical heritage, in terms of both practice and conceptualization. While the rabbis positioned levirate marriage as part of matrimonial law and sought to minimize its application, the Christians regarded it as part of the child–parent relationship under inheritance law and did not reject it as they rejected other biblical laws. I therefore recontextualize the legal discourse on levirate marriage, positioning it as an example of a complex legal transplant that both accepts Greek and Roman legal concepts *and* differs from Roman rulings and rabbinic halakha, rather than as a case of polemic and prohibition of a biblical legal institution.

## THE LEGAL BACKGROUND

By the fourth century, both Palestinian rabbis and Roman emperors in the eastern Roman Empire had rejected the practice of levirate marriage. While the Palestinian rabbis used various

<sup>6</sup> For further discussion on the distinction between legal and non-legal sources, and the method used in this research, see Yifat Monnickendam, "Late Antique Christian Law: Toward a New Paradigm," *Studies in Late Antiquity* 2, no. 1 (2018): 40–83.

hermeneutical processes and halakhic structures to minimize the obligation to this halakha—without rejecting it altogether—Roman emperors and bishops alike deemed levirate marriage incestuous and outlawed it completely.

There are three references to biblical levirate marriage in the Hebrew Bible: Genesis 38, which narrates the story of Judah and Tamar; Ruth 4, which tells the story of Ruth and Boaz; and Deuteronomy 25:5–10, which addresses such marriage directly.<sup>7</sup> The laws portrayed in these texts are not identical. Of the different descriptions, the rabbis employed Deuteronomy 25:5–10 as a basis for discussing, and altering, levirate marriage:

When brothers dwell together, and one of them dies and leaves no son, the wife of the deceased shall not be married to a stranger, outside the family. Her *levir* shall unite with her: he shall take her as his wife, and perform the *levir's* duty. The first son that she bears shall be accounted to the dead brother, that his name may not be blotted out in Israel. But if the man does not want to marry his brother's widow, his brother's widow shall go to the gate, to the elders, and declare: "My *levir* refuses to establish a name in Israel for his brother; he will not perform the duty of a *levir*." The elders of his town shall then summon him and talk to him. If he insists, saying, "I do not want to marry her," his brother's widow shall go up to him in the presence of the elders, pull the sandal off his foot, spit in his face, and make this declaration: "Thus shall be done to the man who will not build up his brother's house!" And he shall go in Israel by the name of "the family of the unsandaled one."<sup>8</sup>

According to Deuteronomy, then, when a man died childless, his brother (the *levir*,<sup>9</sup> the *levir*) was required to marry the widow. The first child born to the living brother and his former sister-in-law (now his wife) was not considered the son of the living brother. Rather, the biological father was considered the sperm donor for his deceased brother, as though the woman were still married to the latter in a ghost marriage. The child, therefore, bore the name of his deceased biological uncle (his mother's first husband) and succeeded him as his biological son. If the surviving brother refused to marry the widow (his sister-in-law), he was publicly shamed in a ceremony that included the humiliating ceremony of *ḥaliza* (removal of the shoe) and being spat upon.

However, although the rabbis utilized Deuteronomy as the basis for their discussions, the description of levirate marriage used in rabbinic literature differs from that found in the Bible. The biblical

7 For further discussion of biblical levirate marriage and the differences between these three sources, see Eryl W. Davies, "Inheritance Rights and the Hebrew Levirate Marriage: Part 1," *Vetus Testamentum* 31, no. 2 (1981): 138–44; Eryl W. Davies, "Inheritance Rights and the Hebrew Levirate Marriage: Part 2," *Vetus Testamentum* 31, no. 3 (1981): 257–68; Dvora E. Weisberg, "The Widow of Our Discontent: Levirate Marriage in the Bible and Ancient Israel," *Journal for the Study of the Old Testament* 28, no. 4 (2004): 403–29.

8 New Jewish Publication Society of America, based on the Masoretic text, with changes. For commentary, see Jeffrey H. Tigay, *Deuteronomy*, The JPS Torah Commentary (Philadelphia: Jewish Publication Society, 1996), 231–33; Duane L. Christensen, *Deuteronomy 21:10–34:12*, World Biblical Commentary 6B (Nashville: Thomas Nelson Publishers, 2002), 603–09, and further bibliography noted there.

9 The root *ybm* appears in Ugaritic and other Semitic languages, meaning *brother-in-law* and the verb relating to consummating marriage with that brother-in-law: see Wilfred G. E. Watson, "Terms Related to the Family in Ugaritic," *Historiae*, no. 10 (2013): 17–50, at 27; Gregorio del Olmo Lete and Joaquín Sanmartín, *A Dictionary of the Ugaritic Language in the Alphabetic Tradition*, trans. Wilfred G. E. Watson, Handbook of Oriental Studies / Handbuch Der Orientalistik 112 (Leiden: Brill, 2015), 2:937. This is also its meaning in biblical Hebrew: Ludwig Köhler, Walter Baumgartner, and Johann Jakob Stamm, *The Hebrew and Aramaic Lexicon of the Old Testament*, 5 vols. (Leiden: Brill, 1994–2000), 2:383. Likewise, the institution of marrying the widow of a family member appears in the ancient Near East, albeit referring to more family members. For a survey, see E. Kutsch, "יבם," in *Theological Dictionary of the Old Testament*, ed. G. Johannes Botterweck and Helmer Ringgren (Grand Rapids: William B Eerdmans, 1986), 367–73.

levirate marriage can be seen both as part of inheritance law as it is aimed at generating an heir through a ghost marriage, and as part of matrimonial law as it coerces marriage between a widow and her *levir*. Significantly, the rabbis emphasized the latter interpretation and reshaped the biblical ghost marriage as a regular marriage between the surviving brother and his former sister-in-law. Indeed, the new marriage was triggered by the death of the first husband and the automatic marital obligation this created, yet, once married, the status of the couple and their children was equal to that of any other matrimony; the child born in this marriage was regarded as the child of the *levir*, his biological father, and did not succeed his deceased uncle.<sup>10</sup> Furthermore, rabbinic halakha attempted in various ways to restrict the cases necessitating levirate marriage. For example, the first Mishnah in tractate *Yebamot* (the tractate discussing levirate marriage) lists various scenarios in which women are exempt from levirate marriage, such as wives from certain polygamous families.<sup>11</sup> Furthermore, these women also exempt their co-wives from this obligation. *Sifre Deuteronomy*, the Tannaitic midrash discussing Deuteronomy 25:5–10, details additional conditions limiting levirate marriage—including certain relations between the brothers (for example, exemption of a brother who was not yet born when the death occurred)—and expands on the list of offspring exempt from it.<sup>12</sup> Moreover, even if a man was not exempt from levirate marriage, unlike biblical law—which encouraged levirate marriage, imposing the ceremonial *haliza* to discourage such refusals—rabbinic halakha, especially Palestinian rabbinic halakha, favored *haliza* over levirate marriage and indeed encouraged it.<sup>13</sup>

As Palestinian rabbis were endeavoring to minimize levirate marriage, the Roman emperors banned it altogether. On April 30, 355 CE, Constantius, Constans, and Julianus ordered that, while ancient law had allowed marriage with a brother- or sister-in-law following the divorce or death of the brother or the sister, such marriage was no longer permitted, and any children born of it were considered illegitimate.<sup>14</sup> Just as in the case of other illegitimate children born of illegitimate marriages, they would not be considered their parents' legal heirs.<sup>15</sup> This prohibition was

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- 10 Samuel Belkin, "Levirate and Agnate Marriage in Rabbinic and Cognate Literature," *Jewish Quarterly Review* 60, no. 4 (1970): 275–329; Dvora E. Weisberg, *Levirate Marriage and the Family in Ancient Judaism* (Waltham: Brandeis University Press, 2009); John Witte, *The Western Case for Monogamy over Polygamy*, Cambridge Studies in Law and Christianity (New York: Cambridge University Press, 2015), 50–55.
- 11 Regarding polygamy in late antique Palestine, see Adiel Schremer, *Male and Female He Created Them: Jewish Marriage in the Late Second Temple, Mishnah and Talmud Periods* (Jerusalem: Zalman Shazar Center, 2003), 183–218; Michael L. Satlow, *Jewish Marriage in Antiquity* (Princeton: Princeton University Press, 2001), 189–92. For a review of monogamy in the Greco-Roman world, see Walter Scheidel, "Monogamy and Polygyny," in *A Companion to Families in the Greek and Roman Worlds*, ed. Beryl Rawson, Blackwell Companions to the Ancient World Literature and Culture (Chichester: Wiley-Blackwell, 2011), 108–15.
- 12 *Sifre on Deuteronomy* 288, ed. Louis Finkelstein (New York: Jewish Theological Seminary of America, 2001), 305–07.
- 13 Mordechai Akiva Friedman, "עכשיו אמרו מצוות הליצה קודמת למצוות הייבום" [The commandment of pulling off the sandal takes precedence over the commandment of levirate] *Te'uda*, no. 13 (1997): 35–66. Concerning the changes from early Tannaitic to Amoraic *halakhic* approaches to *haliza* and its status, see Eliezer Shimshon Rosenthal, "Tradition and Innovation in the Halakha of the Sages," *Tarbiz* 63, no. 3 (1994): 321–74 (in Hebrew with English summary); Yitzhak D. Gilat, *Studies in the Development of the Halakha* (Jerusalem: Bar Ilan University Press, 1994), 273–80.
- 14 *Theodosian Code* 3.12.2. For further discussion, see Judith Evans Grubbs, *Women and the Law in the Roman Empire: A Sourcebook on Marriage, Divorce and Widowhood* (London: Routledge, 2002), 161–62. Regarding its attribution and dating, see Giovanni de Bonfils, "Legislazione ed ebrei nel IV secolo: Il divieto dei matrimoni misti" [Legislation and the Jews in the fourth century: The ban on mixed marriage], *Bullettino dell'istituto di diritto Romano*, no. 29 (1987): 389–438.
- 15 For the definition of *conubium*, the legal capacity to marry in Roman law, and its significance for inheritance, see Susan Treggiari, *Roman Marriage, Iusti Coniuges from the Time of Cicero to the Time of Ulpian* (Oxford:

reiterated in November 393 (or earlier),<sup>16</sup> and again on December 16, 415.<sup>17</sup> In the fifth century, Emperor Zeno repeated it twice, on September 1, 475,<sup>18</sup> and again at a later date.<sup>19</sup> These emperors linked the prohibition to similar bans on the marriage of close kin, such as marriage between a man and his wife's sister or a niece, correctly noting that it was a new law: ancient law did not prohibit marriage between a man and his brother's wife, nor his wife's sister (after death or divorce). Such prohibitions do not appear in Gaius's list, dating from the second century,<sup>20</sup> of incestuous marriages or in the decree issued by Diocletian on May 1, 295, listing forbidden marriages.<sup>21</sup>

And it was not only emperors who started banning levirate and sororate marriages. In the fourth century, some Christian writers issued similar rulings. In 315 CE, the Council of Neo-Caesarea decided against levirate marriage, punishing it with excommunication.<sup>22</sup> Basil, in his second canonical letter of 375 CE, forbade both levirate and sororate marriages.<sup>23</sup> Both were likewise forbidden, independently, by Christians in the western and eastern Roman Empire. At the beginning of the fourth century, the council of Elvira ruled against sororate marriages for widowers,<sup>24</sup> and Basil repeated this prohibition in his third canonical letter of 375 CE;<sup>25</sup> both punished this behavior

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Clarendon Press, 1991), 43–49; Saskia T. Roselaar, “The Concept of Conubium in the Roman Republic,” in *New Frontiers: Law and Society in the Roman World*, ed. Paul J. du Plessis (Edinburgh: Edinburgh University Press, 2013), 102–22.

16 Justinian Code 5.5.5. For dating, see Otto Seeck, *Regesten der Kaiser und Päpste für die Jahre 311 bis 476 N. Chr.* [Synopsis of the emperors and popes for the years 311–476 AD] (Stuttgart: J. B. Metzlersche, 1919), 30.

17 Theodosian Code 3.12.4.

18 Justinian Code 5.5.8. This prohibition is presented contrary to Egyptian law, which allowed marriage to the wife of the deceased brother, because the wives remained virgins during their first marriage. Ludwig Mitteis, *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs: mit Beiträgen zur Kenntniss des griechischen Rechts und der spätromischen Rechtsentwicklung* [Imperial law and local law in the eastern provinces of the Roman Empire: with contributions to the knowledge of Greek law and late Roman legal development] (Leipzig: Teubner, 1891), 223–24, related this to trial marriage, which was less binding than regular marriage. In any case, clearly Zeno did not consider consummation a criterion for the validity of the marriage.

19 Justinian Code 5.5.9.

20 Gaius, *Institutions* 1.56–64.

21 Justinian Code 5.4.17. Concerning its historical background, see Henry Chadwick, “The Relativity of Moral Codes: Rome and Persia in Late Antiquity,” in *Early Christian Literature and the Classical Intellectual Tradition in Honorem Robert M. Grant*, ed. William R. Schoedel and Robert Louis Wilken, *Théologie historique* 54 (Paris: Éditions Beauchesne, 1979), 135–53.

22 Council of Neo-Caesarea 2, in *Acta et symbola conciliorum quae saeculo quarto habita sunt* [Acts and symbols of the fourth century], ed. Engbert Jan Jonkers (Leiden: Brill, 1954), 35–38, at 36.

23 Basil, *Letters* 199.23, in *Saint Basil, The Letters*, vol. 3, ed. and trans. Roy J. Deferrari, Loeb Classical Library 243 (Cambridge, MA: Harvard University Press, 1961), 102–35, at 114–15. (Hereafter all references to Loeb Classical Library are abbreviated LCL.) For dating, see Paul Jonathan Fedwick, *The Church and the Charisma of Leadership in Basil of Caesarea*, *Studies and Texts* 45 (Toronto: Pontifical Institute of Mediaeval Studies, 1979), 148. Regarding Basil's view on marriage according to his canonical letters, see Robert Pouchet, *Basile grand et son univers d'amis d'après sa correspondance* [Basil the Great and his world of friends according to his letters], *Studia Ephemeridis Augustinianum* 36 (Rome: Institutum Patristicum Augustinianum, 1992), 423–29.

24 Council of Elvira 61, in Jonkers, *Acta et symbola*, 5–23, at 19. For the claim that this text is not concerned with levirate marriages but only with the remarriage of widowers, see F. J. E. Boddens Hosang, *Establishing Boundaries: Christian-Jewish Relations in Early Council Texts and the Writings of Church Fathers*, *Jewish and Christian Perspectives Series* 19 (Leiden: Brill, 2010), 72–75. For the debate over the exact dating of the Council of Elvira, see Stefan Heid, *Celibacy in the Early Church: The Beginnings of a Discipline of Obligatory Continence for Clerics in the East and West*, trans. Michael J. Miller (San Francisco: Ignatius Press, 2000), 109–10, and the bibliography noted there.

25 Basil, *Letters* 217.78, in Deferrari, *Saint Basil, The Letters* (LCL 243), 3:258–59. For dating, see Fedwick, *The Church and the Charisma*, 148.

with excommunication. According to the *Apostolic Constitutions*, however, sororate marriage only prevented appointment as a cleric.<sup>26</sup> Yet in Basil's letter to Diodorous in 375 CE, where he refers to a case in which such marriage was allowed, he demonstrates that sororate marriage still occurred in Christian communities. Indeed, Basil explains the reasons behind its prohibition, claiming that this was the common practice.<sup>27</sup>

In fact, not all Christian sources relating to levirate and sororate marriage prohibited it altogether. The *Collatio legum mosaicarum et romanarum*, a fourth-century compilation of Roman legal sources that were positioned on a par with Biblical law and possibly compiled by a Christian,<sup>28</sup> dedicates a section to incestuous marriage. The compiler cites Diocletian's decree alone, ignoring the later Roman prohibitions on levirate marriage, probably because this contradicts the biblical commandment.<sup>29</sup> Eastern sources also undermine the strict Christian prohibition on levirate marriage. The *Syro-Roman Lawbook*, a composition of Roman law written in Greek before the end of the fifth century and translated into Syriac during the sixth century, not only reflects Roman law but also reveals some eastern influences.<sup>30</sup> Similarly to the Roman legal literature, the *Syro-Roman Lawbook* prohibits levirate marriage, tying this to the prohibition on sororate marriage and other close-kin marriages.<sup>31</sup> Yet, unlike the Roman legal sources, the *Syro-Roman Lawbook* explains the prohibition, such as in cases where a levirate marriage is the result of an affair between a man and his brother's wife, which led them to murder the brother and marry

26 *Apostolic Constitution* 8.47.19, in *Les Constitutions apostoliques*, vol. 3, ed. and trans. Marcel Metzger, Sources Chrétiennes 336 (Paris: Éditions du Cerf 1987), 280–81. (Hereafter all references to the Sources Chrétiennes are abbreviated SC.)

27 Basil, *Letters* 160, in Deferrari, *Saint Basil, The Letters* (LCL 243), 2:398–411. Concerning dating, see Fedwick, *The Church and the Charisma*, 148. For a full discussion of the relationship between Basil's rejection of levirate and sororate marriage, and that of the Romans, see Gaetano Colantuono, "Note sul canone 2 del concilio di Neocesarea: La proibizione delle seconde nozze tra cognati nella tarda antichità" [Notes on canon 2 of the Council of Neocesarea: The prohibition of second marriage between in-laws in late antiquity], *Rivista di diritto Romano*, no. 6 (2006): 1–17.

28 For a review of scholarship on the authorship of the *Collatio* and the attribution to a Christian, see Robert M. Frakes, *Compiling the "Collatio Legum Mosaicarum et Romanarum" in Late Antiquity*, Oxford Studies in Roman Society and Law (Oxford: Oxford University Press, 2011), 124–51.

29 *Collatio* 6.4–5, in Frakes, *Compiling the "Collatio Legum Mosaicarum"*, 171–74, the translation at 214–16, and the discussion at 120–21.

30 *Das Syrisch-Römische Rechtsbuch* [The Syro-Roman Lawbook], ed. and trans. Walter Selb and Hubert Kaufhold, Veröffentlichungen der Kommission für antike Rechtsgeschichte 9, 3 vols. (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 2002). For full review of scholarship, see Yifat Monnickendam, "The Kiss and the Earnest: Early Roman Influences on Syriac Matrimonial Law," *Le Muséon* 125, no. 3/4 (2012): 307–34.

31 *Syro-Roman Lawbook* 98a, in Selb and Kaufhold, *The Syro-Roman Lawbook*, 2:136–37; see also the discussion at 3:207–09. Levirate marriage may also be implied in *Syro-Roman Lawbook* 79, 2:100–01 regarding the prohibition on creating brotherhood. In this brotherhood, the wives are not part of the partnership. This may imply that, in cases of biological brothers, wives could have been passed on when a brother died. For further discussion of this paragraph, see Selb and Kaufhold, *Syro-Roman Lawbook*, 3:157–60; Patricia Crone, *The Nativist Prophets of Early Islamic Iran: Rural Revolt and Local Zoroastrianism* (New York: Cambridge University Press, 2012), 410–11. For a discussion regarding the general phenomenon of brotherhood agreements, their history, and their development in liturgy, see the following articles in the special section "Ritual Brotherhood in Ancient and Medieval Europe: A Symposium" in *Traditio*, no. 52: Brent D. Shaw, "Ritual Brotherhood in Roman and Post-Roman Societies," *Traditio*, no. 52 (1997): 327–55; Elizabeth A.R. Brown, "Introduction," *Traditio*, no. 52 (1997): 261–83; "Ritual Brotherhood in Western Medieval Europe," *Traditio*, no. 52 (1997): 357–81; Claudia Rapp, "Ritual Brotherhood in Byzantium," *Traditio*, no. 52 (1997): 285–326. See also Claudia Rapp, *Brother-Making in Late Antiquity and Byzantium: Monks, Laymen, and Christian Ritual*, Onassis Series in Hellenic Culture (New York: Oxford University Press, 2016).

one another (or the equivalent scenario between a man and his wife's sister). Furthermore, the *Syro-Roman Lawbook* concedes that, in certain cases, levirate marriage may be allowed.<sup>32</sup> The composer of the *Syro-Roman Lawbook* explains that if the death and new marriage are not the result of an affair and murder, then levirate or sororate marriage is permitted, subject to the Caesar's approval.<sup>33</sup> Likewise, in the *Life of Rabbula*, Rabbula, of the fifth century,<sup>34</sup> is claimed to forbid sororate marriage and marriage with a niece, yet omits the question of levirate marriage. Similarly, in his *Commandments and Admonitions*, when listing the prohibitions on close-kin matrimony, he explicitly forbade sororate marriages and marriages between men and their nieces or aunts, just as the Roman emperors had done, yet omits levirate marriage from this list.<sup>35</sup> The omission of levirate marriage from these lists of forbidden marriages may indicate that this practice may have not been prohibited.

To conclude, the rabbis, Roman emperors and some of the bishops sought to minimize the practice of levirate marriage. While the rabbis officially accepted its existence and were obligated to it, yet sought to restrict its implementation, the Roman emperors and some bishops banned it altogether. Greek and Latin Christian legal discourse correlated with the Roman rulings on levirate and sororate marriage, yet differed regarding its legal implications. The emperors defined such marriages as illegitimate (children born of them were illegitimate and therefore unable to inherit their parents' property), whereas the Christian writers, lacking the authority and power of the emperors,<sup>36</sup> punished such marriages using various degrees of excommunication. Furthermore, in the *Collatio* and the Syriac sources, this prohibition was limited and possibly even nonexistent. In any case, the rabbis, the Roman emperors and the bishops discussed levirate marriage as part of matrimonial law: the rabbis addressed the marital obligation and portrayed it in terms that were as similar as possible to regular marriages; and the Roman emperors and bishops addressed its prohibition and portrayed it as incestuous marriage. As I show in the following, this is not the picture arising from the exegetical and theological Christian literature which mentions levirate marriage.

32 This explanation is also absent from the Christian sources. As far as I have been able to determine, only Tertullian alludes to it, claiming that the marriage between Herod and Herodias was driven by lust, after the death of Philip. Tertullian, however, does not claim that Herod killed Philip for the sake of this marriage, nor is this claim supported by Josephus, *Antiquities of the Jews* 8.106–08; see Tertullian, *Adversus Marcionem* 4.34.9, in *Tertullian Adversus Marcionem*, ed. and trans. Ernest Evans (Oxford: Clarendon Press, 1972), 452–53.

33 Requests for approval of irregular marriages can be found in late Roman sources (*Theodosian Code* 3.10.1, which is dated to January 23, 409; *Justinian Code* 5.8.1, which is dated to January 2, 409) but not with regard to levirate and sororate marriages. Furthermore, a legal way to legitimize forbidden close-kin marriages is not raised in any of the other marriages mentioned in the following paragraph, namely, nieces, aunts, and the wife or concubine of a father.

34 For a recent study and review of scholarship concerning the relationship between the *Life of Rabbula* and his history, see G. W. Bowersock, "The Syriac Life of Rabbula and Syrian Hellenism," in *Greek Biography and Panegyric in Late Antiquity*, ed. Tomas Hägg and Philip Rousseau (Berkeley: University of California, 2000), 255–71; Robert R. Phenix Jr. and Cornelia B. Horn, eds. and trans., *The Rabbula Corpus: Comprising the "Life of Rabbula," His Correspondence, a Homily Delivered in Constantinople, Canons and Hymns* (Atlanta: SBL Press, 2017), xvii–ccxviii.

35 *Life of Rabbula* 37, in Phenix and Horn, *The Rabbula Corpus*, 2–83, at 54–55; *Commandments and Admonitions for the Priests and the Children of the Covenant* 57, in Phenix and Horn, *The Rabbula Corpus*, 102–17, at 114–15.

36 For the gradual rise in bishops' authority and power, see Claudia Rapp, *Holy Bishops in Late Antiquity: The Nature of Christian Leadership in an Age of Transition*, *The Transformation of the Classical Heritage* 37 (Berkeley: University of California Press, 2005); Caroline Humfress, "Bishops and Law Courts in Late Antiquity: How (Not) to Make Sense of the Legal Evidence," *Journal of Early Christian Studies* 19, no. 3 (2011): 375–400.



## JESUS'S GENEALOGY

The opening verses of the New Testament, Matthew 1:1–17, describe Jesus's genealogy and his Davidic lineage, through Joseph. Significantly, if Joseph is of Davidic lineage, so is his son Jesus, thus fulfilling the prophecy that the Messiah would come from the house of David.<sup>37</sup> Like Matthew, Luke 3:23–38 also includes a genealogy of Joseph, although the two genealogies are not identical, raising theological questions regarding their validity.<sup>38</sup> While, according to Matthew, Joseph is the son of Jacob, son of Mathan, Luke notes that Joseph is the son of Heli, (son of Mattat, son of Levi),<sup>39</sup> son of Melchi.<sup>40</sup>

Julius Africanus, in his letter to Aristides in the third century, addresses this contradiction, explaining it as a result of levirate marriage. Melchi and Mathan married the same woman, making

37 Concerning the importance of the Davidic lineage in the New Testament and the contradicting genealogies, see Sherman E. Johnson, "The Davidic Royal Motif in the Gospels," *Journal of Biblical Literature* 87, no. 2 (1968): 136–50; Marshall D. Johnson, *The Purpose of the Biblical Genealogies, with Special Reference to the Setting of the Genealogies of Jesus*, Society for New Testament Studies Monograph Series 8 (Cambridge: Cambridge University Press, 1969), 139–252; David Flusser, *Jesus* (Jerusalem: Magnes, 2001), 25–26, 180–86; cf. Raymond E. Brown, *The Birth of the Messiah, a Commentary on the Infancy Narratives in the Gospels of Matthew and Luke*, Anchor Bible Reference Library (New York: Doubleday, 1993), 505–12, who claims the Davidic genealogy of Jesus has a historical background and is not only based on theological needs; and Martin Karrer, "Von David zu Christus" [From David to Christ], in *König David—Biblische Schlüsselfigur und europäische Leitgestalt* [King David: Key biblical figure and European leader], ed. Walter Dietrich and Hubert Herkommer (Freiburg: W. Kohlhammer, 2003), 327–65, who minimizes the importance of Jesus's Davidic lineage. For a survey of the early Jewish Davidic traditions, see Kenneth Pomykala, *The Davidic Dynasty Tradition in Early Judaism: Its History and Significance for Messianism*, SBL Early Judaism and Its Literature 7 (Atlanta: Scholars Press, 1995); Ernst-Joachim Waschke, "The Significance of the David Tradition for the Emergence of Messianic Beliefs in the Old Testament," in "David," special issue, *Word & World* 23, no. 4 (2003): 413–20; Joseph A. Fitzmyer, *The One Who Is to Come* (Grand Rapids: Eerdmans, 2007), 33–55. For a partial discussion regarding the importance of the Davidic kingdom in Ephrem's *Commentary on Genesis*, see Tacke Jansma, "Ephraem on Genesis XLIX, 10: An Enquiry into the Syriac Text Forms as Presented in His Commentary on Genesis," *Parole de l'Orient* 4, no. 1/2 (1973): 247–56; Lucas van Rompay, "Antiochene Biblical Interpretation: Greek and Syriac," in *The Book of Genesis in Jewish and Oriental Christian Interpretation*, ed. Judith Frishman and Lucas van Rompay, *Traditio Exegetica Graeca* 5 (Louvain: Peeters, 1997), 103–23, at 117–19; Yifat Monnickendam, "How Greek is Ephrem's Syriac? Ephrem's *Commentary on Genesis* as a Case Study," *Journal of Early Christian Studies* 23, no. 2 (2015): 213–44, 227–42.

38 Origen, in his *Contra Celsum*, mentions that the contradictions were used as charges against the Christians and an inner-Christian theological question, but does not detail the charges: see Origen, *Contra Celsum* 2.32, in *Contre Celse, Livres I et II*, vol. 1, ed. M. Borret, SC 132 (Paris: Éditions du Cerf, 2005), 364–65. Emperor Julianus, in the fourth century, claims that the contradictions among the genealogies prove their falsehood: see Cyril of Alexandria, *Contra Julianum* 8.261, *Patrologia Graeca* 76, 900D. (Hereafter, all references to the *Patrologia Graeca* are abbreviated PG.)

39 This part of the tradition was probably unknown to Julius Africanus.

40 For some of the commentary on the contradictions in the genealogies, see William Foxwell Albright and Carl Mann, *Matthew*, The Anchor Bible (Garden City: Doubleday, 1971), 1–6; Joseph A. Fitzmyer, *The Gospel According to Luke (I–IX)*, The Anchor Bible (Garden City: Doubleday & Company, 1979), 488–505; William David Davies and Dale C. Allison, *A Critical and Exegetical Commentary on the Gospel According to Saint Matthew*, International Critical Commentary on the Holy Scriptures of the Old and New Testaments, 3 vols. (Edinburgh: T. & T. Clark, 1988), 1:161–90; John Nolland, *Luke 1–9:20*, Word Biblical Commentary 35A (Dallas: Word Books, 1989), 166–74; François Bovon, *Luke 1*, trans. Christine M. Thomas, Hermeneia: A Critical and Historical Commentary on the Bible (Minneapolis: Fortress Press, 2002), 133–37; Ulrich Luz, *Matthew 1–7*, trans. James E. Crouch, Hermeneia: A Critical and Historical Commentary on the Bible (Minneapolis: Fortress Press, 2007), 79–89 and further bibliography noted there.

their sons, Jacob and Heli, maternal brothers. When Heli died childless, his maternal brother, Jacob, married Heli's wife. Heli was therefore Joseph's father by law, rather than by nature:

For whereas in Israel the names of their families were reckoned either according to nature or according to law (ἢ φύσει ἢ νόμῳ), according to nature (φύσει), indeed, by the succession of legitimate offspring (γενήσιου), and according to law (νόμῳ) whenever another raised up children to the name of a brother dying childless ...

Thus, though of two different families, we will find Jacob and Heli maternal brothers. And of these, the one Jacob, having taken the wife of his brother Heli, who died childless, begat by her the third, Joseph, his son by nature and by reason (κατὰ φύσιν ... κατὰ λόγον). Hence, it is written, "And Jacob begat Joseph," but according to law (κατὰ νόμον) he was the son of Heli, for Jacob his brother raised up seed to him.<sup>41</sup>

The levirate marriage described here follows the aforementioned biblical description of sperm donation or ghost marriage: when a man died childless, the child born to the *levir* and his former sister-in-law succeeded his deceased uncle—his mother's first husband—as though he were his legitimate son. Julius Africanus, however, adds to this description and distinguishes between "a son by nature" and "a son by law"—the former being the son of the biological father (the *levir*) and legitimate heir, and the latter being the son of the deceased uncle. This explanation suits Roman legal thinking in two respects. First, as noted earlier, Roman law developed the idea that only legitimate children (γενήσιος, *legitimus*) born of legitimate marriages (*conubium*) could inherit. Second, Roman law cultivated the notion of non-biological family relations, especially adoption. Indeed, Roman jurists acknowledged and developed cases of a father by law rather than by nature.<sup>42</sup> In fact, this also correlates with the claim that the insertion of the genealogies into the Gospels was, from the outset, based on the concept of adoption. According to the Gospels, Joseph is not Jesus's father, because Jesus is the son of God. Joseph was married to Mary, Jesus's mother, and raised Jesus, but did not beget him. Thus, Jesus's Davidic lineage is only significant if we assume that the relationship between Jesus and Joseph was strong enough to bequeath legal status and family ties.<sup>43</sup>

41 Christophe Guignard, *La lettre de Julius Africanus à Aristide sur la généalogie du Christ: Analyse de la tradition textuelle, édition, traduction et étude critique* [Julius Africanus's letter to Aristide on the genealogy of Christ: Analysis of the textual tradition, editing, translation and critical study], *Texte und Untersuchungen zur Geschichte der altchristlichen Literatur* 167 (Berlin: De Gruyter, 2011), 296, 298. (My translation.)

42 Regarding adoption in Roman law, see Mireille Corbier, "Constructing Kinship in Rome: Marriage and Divorce, Filiation and Adoption," in *The Family in Italy from Antiquity to the Present*, ed. David I. Kertzer and Richard P. Saller (New Haven: Yale University Press, 1991), 127–44; Mireille Corbier, "Divorce and Adoption as Roman Familial Strategies (Le divorce et l'adoption 'en plus')," in *Marriage, Divorce, and Children in Ancient Rome*, ed. Beryl Rawson (Canberra: Humanities Research Centre and Clarendon Press, 1992), 47–78, at 63–76; Jane F. Gardner, *Family and Familia in Roman Law and Life* (Oxford: Clarendon Press, 1998), 114–32; "Status, Sentiment and Strategy in Roman Adoption," in *Adoption et fosterage* [Adoption and fostering], ed. Mireille Corbier, *De l'archéologie à l'histoire* (Paris: De Boccard, 1999), 63–79; Hugh Lindsay, *Adoption in the Roman World* (Cambridge: Cambridge University Press, 2009).

43 Concerning this claim, see Yigal Levin, "Jesus, 'Son of God' and 'Son of David': The 'Adoption' of Jesus into the Davidic Line," *Journal for the Study of the New Testament* 28, no. 4 (2006): 415–42, at 415–25; Yifat Monnickendam, *Jewish Law and Early Christian Identity: Betrothal, Marriage, and Infidelity in the Writings of Ephrem the Syrian* (Cambridge: Cambridge University Press, 2019); Augustine, *De consensu evangelistarum* 2.1.2–3, in *Consensu evangelistarum. Libri quattuor*, ed. Franz Wehrich, *Corpus Scriptorum Ecclesiasticorum Latinorum* 43 (Vienna: F. Tempsky 1904), 4:82–83. (Hereafter all references to the *Corpus Scriptorum Ecclesiasticorum Latinorum* are abbreviated CSEL.)

Eastern and western Christian authors accepted and repeated Julius Africanus's explanation of Joseph's genealogy, his description of levirate marriage and his distinction between natural and legal paternity. At the beginning of the fourth century, Eusebius (ca. 263 CE–ca. 339 CE) cites Africanus's epistle in his *Ecclesiastical History*,<sup>44</sup> repeating this claim in his *Questions*.<sup>45</sup> Severus of Antioch (d. 538 CE), whose writings were preserved in Syriac, yet written in Greek and deeply influenced by Roman law,<sup>46</sup> accepts the distinction between natural and legal paternity in a homily dedicated to the contradiction between Matthew and Luke.<sup>47</sup> This claim was particularly popular in Latin Christian literature and can be found in Jerome's *Commentary on Matthew* of 398 CE,<sup>48</sup> Ambrose of Milan's *Exposition on Luke*,<sup>49</sup> Hilary of Poitiers' *Commentary on Matthew*,<sup>50</sup> and Ambrosiaster's *Questions on the Old and New Testament*.<sup>51</sup> In the fifth century, when reiterating

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- 44 Eusebius, *Ecclesiastical History* 1.7, in *The Ecclesiastical History*, vol. 1, ed. and trans. Kirsopp Lake, LCL 153 (Cambridge, MA: Harvard University Press, 1959), 54–65.
- 45 Eusebius, *Greek Questions* 4.2, in *Questions évangéliques*, ed. Claudio Zamagni, SC 523 (Paris: Éditions du Cerf, 2008), 119–21; Eusebius, *Syriac Questions* 11.4, ed. and trans. Gerhard Beyer, in “Die Evangelischen Fragen und Lösungen des Eusebius in Jakobitischer Überlieferung und deren Nestorianische Parallelen” [Eusebius's evagelic questions and answers in Jacobite transmission and their Nestorian parallels], *Oriens Christianus* 2, nos. 12–14 (1925): 30–70, at 64–69; Eusebius, *Syriac Questions*, bericht 6, ed. and trans. Gerhard Beyer, in “Die Evangelischen Fragen und Lösungen des Eusebius in Jakobitischer Überlieferung und deren Nestorianische Parallelen” [Eusebius's evagelic questions and answers in Jacobite transmission and their Nestorian parallels], *Oriens Christianus* 3, no. 2 (1927): 57–69, at 66–67. For dating, see Zamagni, *Questions évangéliques*, 42–46.
- 46 On Severus's life and work, see recently Yonatan Moss, *Incorruptible Bodies: Christology, Society, and Authority in Late Antiquity*, Christianity in Late Antiquity 1 (Oakland: University of California Press, 2016), 1–6. The claim that Severus's Roman legal training influenced his hermeneutics was raised by René Roux, “The Concept of Orthodoxy in the *Cathedral Homilies* of Severus of Antioch,” *Studia Patristica*, no. 35 (2001): 487–93; René Roux, “Severus of Antioch at the Crossroad of the Antiochene and Alexandrian Exegetical Tradition,” in *Severus of Antioch: His Life and Times*, ed. John D'Alton and Youhanna Youssef, Texts and Studies in Eastern Christianity 7 (Leiden: Brill, 2016), 160–82; Yonatan Moss, “‘Packed with Patristic Testimonies’: Severus of Antioch and the Reinvention of the Church Fathers,” in *Between Personal and Institutional Religion: Self, Doctrine, and Practice in Late Antique Eastern Christianity*, ed. Bruria Bitton-Ashkelony and Lorenzo Perrone, Cultural Encounters in Late Antiquity and the Middle Ages 15 (Turnhout: Brepols, 2013), 227–50; and Yonatan Moss *Incorruptible Bodies*, 126–34.
- 47 Severus of Antioch, *Homily 95*, in *Les Homiliae cathedrales de Sévère d'Antioche: Homélie XCI à XCVIII*, ed. and trans. Maurice Brière, *Patrologia Orientalis* 121 (25.1) (Paris: Firmin-Didot, 1943), 80–84. (Hereafter all references to the *Patrologia Orientalis* are abbreviated PO.)
- 48 Jerome, *Matthew* 1.16, in *Commentaire sur saint Matthieu*, vol. 1, *Livres I–II*, ed. Émile Bonnard, SC 242 (Paris: Éditions du Cerf, 1977), 74–77, in response to Emperor Julianus, whose composition *Against the Galilaeans* is preserved by Cyril of Alexandria. For this section, see Cyril of Alexandria, *Contra Julianum* 8.261 (PG 76), 900D. For dating, see Bonnard's introduction to *Commentaire sur saint Matthieu* (SC 242), at 11–12.
- 49 Ambrose, *Luke* 3.15, in *Traité sur l'Évangile de S. Luc*, vol. 1, ed. Gabriel Tissot, SC 45 (Paris: Éditions du Cerf, 1956), 127. For dating, see pages 9–11.
- 50 Hilary of Poitiers, *Matthew* 1.1, in *Sur Matthieu, Chap. 1–13*, ed. Jean Doignon, SC 254 (Paris: Éditions du Cerf, 1978), 90–93. Unlike the other commentators, Hilary of Poitiers adds that the *levir* should be the eldest brother. A similar requirement also appears in rabbinic sources: *Mishnah*, Yebamot 2:8; *Tosefta*, Yebamot 4:3; Sifre Deuteronomy 289, in Finkelstein, *Sifre Deuteronomy*, 307; *Palestinian Talmud*, Yebamot 2:8, 4b, in *The Historical Dictionary of the Hebrew Language* (Jerusalem: The Academy of the Hebrew Language, 2001), 840:10–16 (hereafter Academy ed.); *Babylonian Talmud*, Yebamot 24a. The *Sifre*, Palestinian Talmud, and Babylonian Talmud learn this from Deuteronomy 25:6: “And it shall be that the firstborn son which she bears will succeed to the name of his dead brother,” even though this verse describes the oldest son, rather than the oldest brother. A similar process may have occurred in Hilary's reading of Deuteronomy 25:6.
- 51 Ambrosiaster, *Question 56*, falsely attributed to Augustine and published in *Pseudo Augustini, quaestiones veteris et novi testamenti CXXVII*, ed. Alexander Souter, CSEL 50 (Vienna: F. Tempsky 1908), 101–03. For this

this claim, Augustine explicitly used the term *adoption* to explain the relationship between the deceased brother and his newborn biological nephew.<sup>52</sup>

A comparison of Africanus's description of levirate marriage with rabbinic halakha shows that, while his description correlates with biblical law, it is modeled on Roman legal concepts and contrasts sharply with two main principles of rabbinic halakha.<sup>53</sup> First, rabbinic halakha does not acknowledge any form of adoption. In fact, it does not acknowledge any means of legally creating artificial paternity, regarding only biological paternity as valid. Any distinction between "son by law" and "son by nature," or of a child as illegitimate and unrecognized,<sup>54</sup> is therefore meaningless in rabbinic halakha. This is especially evident in the rabbinic adaptation of biblical levirate marriage, according to which, as I have shown, the newborn son is considered the son of the *levir*, his biological father (as any child would be), rather than the son of his deceased uncle. Even the option of merely naming the child after his deceased uncle is rejected in favor of the interpretation that the *levir* himself succeeds his brother.<sup>55</sup> Second, one of the ways that the rabbis limited biblical

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reference, I used the forthcoming edition by Marie-Pierre Bussi eres and thank her for sharing her unpublished materials with me.

- 52 Augustine, *Retractations* 33.2, in *Sancti Aureli Augustini, Retractationum libri duo*, ed. Pius Knoll, CSEL 36 (Vienna: F. Tempsky 1902), 139–40; Augustine, *Retractations* 42, in Knoll, *Sancti Aureli Augustini* (CSEL 36), 149–51. See also Augustine, *Contra Faustum* 3.3, in *S. Aureli Augustini*, ed. Joseph Zycha, CSEL 25.1 (Vienna: F. Tempsky 1891), 249–797, at 263–65, to which Augustine himself refers. In this section Augustine explains the concept of adoption and its relation to Christianity.
- 53 While Jean-Ren e Vieillefond argued that Julius Africanus was a Jew, Ephrat Habas-Rubin showed he was not: Jean-Ren e Vieillefond, *Les "Cestes" de Julius Africanus:  tude sur l'ensemble des fragments, avec  dition, traduction et commentaires* [The "Cestes" of Julius Africanus: Studies of the fragments, with an edition, translation and commentaries], Publications de l'institut fran ais de florence le s erie, Collection d' tudes d'histoire, De critique et de philologie 20 (Firenze: Sansoni, 1970); Ephrat Habas-Rubin, "The Jewish Origin of Julius Africanus" *Journal of Jewish Studies* 45, no. 1 (1994): 86–91. For Africanus's general use of Palestinian sources in other cases, see William Adler, "Sextus Julius Africanus and the Roman Near East in the Third Century," *Journal of Theological Studies* 55, no. 2 (2004): 520–50; William Adler, "The 'Chronographiae' of Julius Africanus and its Jewish Antecedents," *Zeitschrift f ur Antikes Christentum* 14, no. 3 (2011): 496–524.
- 54 The lack of concept of adoption in late antique as well as modern halakha was not significantly discussed. For the latest discussion, see my study on child exposure, Yifat Monnickendam, "The Exposed Child: Transplanting Roman Law into Late Antique Jewish and Christian Legal Discourse." *American Journal of Legal History* 59, no. 1 (2019): 1–30, at 9–18 and the bibliography noted there. For the definition of a *mamzer*, who may not marry a Jew yet is not disinherited and is viewed as a son of his parents, see the following: Louis M. Epstein, *Marriage Laws in the Bible and the Talmud*, Harvard Semitic Series (Cambridge, MA: Harvard University Press, 1942), 279–82; Boaz Cohen, "On the Theme of Betrothal in Jewish and Roman Law," *Proceedings of the American Academy for Jewish Research*, no. 18 (1948–49): 67–135, 110; Adolph B uchler, "Family Purity and Family Impurity in Jerusalem before the Year 70 CE," in *Studies in Jewish History: The Adolph B uchler Memorial Volume*, ed. Israel Brodie and Joseph B. Rabinowitz, Jews' College Publications, n.s. 1 (London: Oxford University Press, 1956), 64–98, at 72–81; Charles Touati, "Le Mamzer, la Zona et le statut des enfants issus d'un mariage mixte en droit rabbinique" [The Mamzer, the Zona and the status of children born of mixed marriage in rabbinic law], in *Les Juifs au regard de l'histoire: m langes en l'honneur de Bernhard Blumenkranz* [The Jews in history: Collection in honor of Bernhard Blumenkranz], ed. Gilbert Dahan (Paris: Picard, 1985), 37–47, at 37–39; Joseph Levitsky, "The Illegitimate Child (Mamzer) in Jewish Law," *Jewish Bible Quarterly* 18, no. 1 (1989): 6–12; Shaye J. D. Cohen, *The Beginnings of Jewishness: Boundaries, Varieties, Uncertainties*, Hellenistic Culture and Society 31 (Berkeley: University of California Press, 1999), 263–307. Regarding the possible influence of *conubium* on rabbinic halakha, see Ranon Katzoff, "Children of Inter-marriage: Roman and Jewish Conception," in *Rabbinic Law in Its Roman and Near Eastern Context*, ed. Catherine Hezser, Texte und Studien zum Antiken Judentum 97 (T bingen: Mohr Siebeck, 2003), 277–86.
- 55 *Sifre Deuteronomy* 289, in Finkelstein, *Sifre Deuteronomy*, 307; *Midrash Tanna'im to Deuteronomy*, 25:6, *Der Midrasch Tanna'im zum Deuteronomium*, ed. David Zvi Hoffmann (Berlin: Itzkowski, 1909), 166; *Babylonian Talmud*, Yebamot 24a; the discussion of Weisberg, *Levirate Marriage and the Family in Ancient Judaism*, 174–76.

levirate marriage was by exempting certain brothers from this obligation under specific conditions. One of these conditions, in both Tannaitic and Amoraic sources, defines the *levir* as a paternal brother rather than a maternal brother. While a paternal brother is obligated to marry his sister-in-law, a maternal brother is exempt (and therefore also prohibited) from doing so.<sup>56</sup> Consequently, Heli and Jacob, who are maternal brothers, could not have performed levirate marriage, and could not have been Joseph's two fathers, according to rabbinic halakha.

Africanus's description of levirate marriage therefore correlates with a possible interpretation of the biblical law, according to which levirate marriage is a form of ghost marriage aimed at securing succession and inheritance, and is modeled according to Roman legal concepts of adoption and inheritance. Furthermore, it contradicts the rabbinic description of levirate marriage as part of matrimonial law, as well as the specific limitations the rabbis imposed on this kind of marriage, but does not reject levirate marriage as a practice, nor does it imply any negative consequences of such a marriage. Rather, it is described as the type of marital union that leads to the birth of Joseph, Jesus's so-called father.

## RESURRECTION

The Synoptic Gospels not only raise the question of levirate marriage indirectly, regarding Joseph's genealogies, but also directly, as a basis for a theological question. According to these Gospels, the Sadducees use the commandment of levirate marriage to pose a question regarding the resurrection of the dead. They asked Jesus the following:

The same day some Sadducees came to him, saying there is no resurrection; and they asked him a question, saying, "Teacher, Moses said, 'If a man dies childless, his brother shall marry the widow (ἐπιγαμβρεύσει<sup>57</sup>), and raise up (ἀναστήσει) children for his brother.' Now there were seven brothers among us; the first married, and died childless, leaving the widow to his brother. The second did the same, so also the third, down to the seventh. Last of all, the woman herself died. In the resurrection, then, whose wife of the seven will she be? For all of them had married her." Jesus answered them, "You are wrong, because you know neither the scriptures nor the power of God. For in the resurrection they neither marry nor are given in marriage, but are like angels in heaven. And as for the resurrection of the dead, have you not read what was said

56 *Sifre Deuteronomy* 288, in Finkelstein, *Sifre Deuteronomy*, 306; *Sifre Zuta Deuteronomy* 25:5, in *Sifre Zuta on Deuteronomy, Citations from a New Tannaitic Midrash*, ed. Menahem Kahana (Jerusalem: Magnes, 2002), 387–92, and the discussion at 387–90, where Kahana distinguishes between the two hermeneutical ways to restrict levirate marriage to paternal brothers alone; Hoffman, *Midrash Tannaim to Deuteronomy*, 25:5, 164; *Palestinian Talmud*, Yebamot 1:1, 2b, in Academy ed., 829:33–36, 42–44; Yebamot 1:1, 2d, in Academy ed., 832:7–12; *Babylonian Talmud*, Yebamot 17b.

57 Christian literature uses no specific term to describe levirate marriage. The Septuagint does not employ any particular terminology in translating the root מ"ב but rather several paraphrases (for example, Deuteronomy 25:6: ὁ ἀδελφὸς τοῦ ἀνδρὸς . . . καὶ συνοικήσει αὐτῇ, translating נָשָׂא . . . נִשְׂאָה). The verb ἐπιγαμβρεύω appears here for the first time in this specific context. In the Septuagint it is used to refer to becoming an in-law through marriage (rather than to marry someone), with respect to any kind of marriage (rather than specifically levirate marriage, for example, Genesis 34:9; I Samuel 18:22–27; II Esdras 9:14; I Maccabees 10:54–56). Early Christian writers who use this term do not restrict it to levirate marriage (see for example, Clement of Alexandria, *Stromata* 1.21.24, in *Stromate* 1, ed. Claude Mondésert and Marcel Caster, SC 30 [Paris: Éditions du Cerf, 1951], 137; Eusebius, *Ecclesiastical History* 10.8.2, in Lake, *Ecclesiastical History*, 466), other than in cases discussing Matthew 22:24 (for example, Epiphanius, *Panarion* 14.3.1, in *Ancoratus und Panarion*, ed. Karl Holl [Leipzig: J. C. Hinrichs'sche Buchhandlung, 1915], 1:208; translation in *The Panarion of Epiphanius of Salamis. Book I (sects. 1–46)*, Frank Williams [Leiden: Brill, 2009], 1:40).

to you by God, 'I am the God of Abraham, the God of Isaac, and the God of Jacob'? He is God not of the dead, but of the living." And when the crowd heard it, they were astounded at his teaching.<sup>58</sup>

In this episode, Jesus does not oppose the idea of levirate marriage; rather, he opposes the idea of any kind of marriage following the resurrection. According to his claims, there will be no marriage after the resurrection. One cannot deduce, therefore, from the biblical commandment of levirate marriage—which obligates a widow to remarry—that the Hebrew Bible assumes the widow will never see her late husband again, and thus denies the resurrection. Rather, there will be no marriage whatsoever following the resurrection. Consequently, allowing a widow to remarry, and hence have more than one husband when resurrected, is irrelevant: she will not be married to any of her late (or resurrected) husbands.

Connecting the belief in bodily resurrection with levirate marriage not only concerns the question of marriage after the resurrection. It also draws on the fact that levirate marriage offers some form of physical continuity to a man who dies without offspring. However, belief in the resurrection promises such a future continuity even without offspring: the deceased himself, rather than his offspring, will remain in the world. Furthermore, the Septuagint of Deuteronomy 25:7 describes the purpose of levirate marriage using the root ἀνίστημι—translating מִקְרָא לָהֵרֶס (to make rise)—which is the exact same root that is used for resurrection, and which the Sadducees employed when citing the biblical levirate law.<sup>59</sup> Likewise, Christian writers later used this same root to discuss resurrection.

Like Jesus in the New Testament, Christian writers commenting on this episode do not mention rejection of levirate marriage in any way, but rather address the belief in the resurrection.<sup>60</sup> Their discussions follow the biblical description of levirate marriage,<sup>61</sup> in some cases tying this Jewish practice to changes regarding belief in the resurrection: from its absence in biblical times to its current existence.<sup>62</sup> Julius Africanus explains levirate marriage as being due to the lack of belief in resurrection: because this was not part of the Israelite belief system, the only way to maintain the name

58 Matthew 22:23–33 (New Revised Standard Version); Mark 12:18–27; Luke 20:27–40. For commentary, see Ulrich Luz, *Matthew 21–28*, trans. James E. Crouch, Hermeneia: A Critical and Historical Commentary on the Bible (Minneapolis: Fortress Press, 2005), 68–74; Adela Yarbro Collins, *Mark*, Hermeneia: A Critical and Historical Commentary on the Bible (Minneapolis: Fortress Press, 2007), 557–64; Joel Marcus, *Mark 8–16*, The Anchor Yale Bible 27A (New Haven: Yale University Press, 2009), 826–36; François Bovon, *Luke 3*, trans. James E. Crouch, Hermeneia: A Critical and Historical Commentary on the Bible (Minneapolis: Fortress Press, 2012), 58–78; Joseph A. Fitzmyer, *The Gospel According to Luke (X–XXIV)*, The Anchor Bible 28A (New York: Doubleday, 1983), 1298–308.

59 Matthew 22:24; Mark 12:19 (ἐξαναστήσει); Luke 20:28 (ἐξαναστήσει); and similarly in Ruth 4:5, 10.

60 Tertullian, *de resurrectione carnis* 2.1, in *Tertullian's Treatise on the Resurrection*, ed. and trans. Ernest Evans (London: S.P.C.K., 1960), 4–7; Tertullian, *de resurrectione carnis* 36, in Evans, *Tertullian's Treatise on the Resurrection*, 98–102; Tertullian, *Adversus Marcionem* 4.38, in *Evans Adversus Marcionem*, 474–81; Tertullian, *Ad Uxorem* 1.1.4–6, in *À son Épouse*, ed. and trans. Charles Munier, SC 273 (Paris: Éditions du Cerf, 1980), 94–95; Irenaeus, *Haereseas* 4.5.2, in *Contre les hérésies, Livre IV*, ed. and trans. Adelin Rousseau, SC 100 (Paris: Éditions du Cerf, 1965), 428–31; Methodius in Epiphanius, *Panarion* 64.43.1, in Holl, *Ancoratus und Panarion*, 2:466, and Williams, *Panarion of Epiphanius of Salamis* 2:168.

61 Epiphanius, *Panarion* 14.3.1 in Holl, *Ancoratus und Panarion*, 1:208, and Williams, *Panarion of Epiphanius of Salamis* 1:40.

62 For a similar claim in modern scholarship, see Efraim Elimelech Urbach, "Inheritance Laws and After-Life," *Proceedings of the World Congress of Jewish Studies* 1.4.1 (1965): 133–41. For the Jewish belief in the resurrection of the dead and the similarity between the Jewish and Christian apologetic claims, see Yifat Monnickendam, "'I Bring Death and Give Life, I Wound and Heal' (Deut. 32:39): Two Versions of the Polemic on the Resurrection of the Dead," *Henoah* 35, no. 1 (2013): 90–118, and the bibliography noted there.

of the deceased was via levirate marriage.<sup>63</sup> Eusebius follows this claim, arguing that the Hebrews lack belief in the resurrection,<sup>64</sup> while, according to Ephrem (ca. 306–373 CE), although the Jews believe in the resurrection, they mistakenly maintain that there will be marriage following the resurrection.<sup>65</sup> Farther west, in the fourth century, Ambrose of Milan claims that not only the Sadducees, but also all Jews, have no belief in the resurrection.<sup>66</sup>

Having distinguished between pharisees, who believed in the bodily resurrection, and sadducees, who denied it, Jerome claims that a story concerning the levirate marriage of seven brothers may have actually occurred in their nation.<sup>67</sup> Conversely, John Chrysostom (347–407 CE) deems the tale fictitious. Indeed, according to his writings, at this stage the Jews no longer performed levirate marriage, possibly reflecting the rabbinic attempt to minimize the practice, preferring *haliza*.<sup>68</sup> To conclude this point, when discussing levirate marriage directly, the early Christian writers who commented on the dispute between Jesus and the sadducees described such marriage following its biblical description, and focused on its role in ensuring continuity. They did not oppose the practice itself, but rather addressed its significance to the theological discussion on the resurrection of the dead.

## HEROD AND JOHN THE BAPTIST

The third pericope of the Gospels, which serves as a basis for discussion of levirate marriage, is the story of Herod and John the Baptist:

For Herod had arrested John, bound him, and put him in prison on account of Herodias, his brother Philip's wife, because John had been telling him, "It is not lawful for you to have her." Though Herod wanted to put him to death, he feared the crowd, because they regarded him as a prophet.<sup>69</sup>

63 Guignard, *La lettre de Julius Africanus*, 296.

64 Eusebius, *Greek Questions* 4.2, in Zamagni, *Questions Évangéliques*, 119–21; *Syriac Questions* 11.4, in Beyer, "Die Evangelischen Fragen" [1925], 64–69; *Syriac Questions*, bericht 6, in Beyer, "Die Evangelischen Fragen" [1927], 66–67.

65 Ephrem, *Diatessaron* 16.22, in *Commentaire de l'évangile concordant: texte syriaque (manuscrit chester beatty 709)*, ed. Louis Leloir (Dublin: Hodges Figgis, 1963), 180; translation in Carmel McCarthy, *Saint Ephrem's Commentary on Tatian's Diatessaron: An English Translation of Chester Beatty Syriac MS 709*, *Journal of Semitic Studies Supplement* 2 (Oxford: Oxford University Press, 1993), 254.

66 Ambrose, *Luke* 3.15, in Tissot, *Traité sur l'Évangile de S. Luc* (SC 45), 127–28.

67 Jerome, *Matthew* 3.22.23–25, in *Commentaire sur s. Matthieu*, vol. 2., *Livres III et IV*, ed. and trans. Émile Bonnard, SC 259 (Paris: Éditions du Cerf, 1979), 150–53. See Thomas P. Scheck, *St. Jerome: Commentary on Matthew*, *The Fathers of the Church* 117 (Washington, DC: Catholic University of America Press, 2008), 254, who related this to Tobit 3.8–9. Similar cases are also discussed in rabbinic literature, such as *Palestinian Talmud*, Yebamot 4:11, 6c, in *Academy ed.*, 852:21–30. Following *Mishnah*, Yebamot 4:11 regarding a man who must marry the three widows of his three deceased and childless brothers, the Palestinian Talmud raises a question concerning a man who must marry the twelve widows of his twelve deceased and childless brothers. This question is probably theoretical, yet may reflect a reality of multiple levirate marriages. For further discussion, see Schremer, *Male and Female*, 200–01 and the further bibliography noted there.

68 John Chrysostom, *Matthew* 70.2 (PG 58), 657. See also Epiphanius, *Panarion* 64.43.1 in Holl, *Ancoratus und Panarion*, 2:466, and the translation of Williams, *Panarion of Epiphanius of Salamis*, 2:168.

69 *Matthew* 14:3–5, (New Revised Standard Version). See also Mark 6:17–18; Luke 3:19. For commentary, see Luz, *Matthew* 21–28, 305–09; Donald A. Hagner, *Matthew* 14–28, *Word Biblical Commentary* 33B (Dallas: Word Books, 1995), 412; Yarbro Collins, *Mark*, 307; Carl S. Mann, *Mark*, *The Anchor Bible* 27 (New York: Doubleday, 1986), 296; Robert A. Guelich, *Mark* 1–8:26, *Word Biblical Commentary* 34A (Dallas: Word

The evangelist does not detail why the marriage between Herod and Philip's wife is forbidden, but Christian writers apparently complete this gap based on information from Josephus's *Antiquities of the Jews*. Josephus's writings include two contradictory mentions of Herodias's marriages to Philip and Herod: it is unclear whether Herod married Herodias, Philip's wife, while the latter was alive or after his death, but in any case, she bore Philip a daughter.<sup>70</sup> Because of this daughter, and possibly because Philip was still alive, this union could not be considered biblical levirate marriage. According to biblical law, such marriage was actually deemed incestuous (Leviticus 18:16).

For one or both of these reasons, from the third century onward, Tertullian,<sup>71</sup> Origen,<sup>72</sup> Eusebius,<sup>73</sup> Jerome,<sup>74</sup> John Chrysostom,<sup>75</sup> Ambrose,<sup>76</sup> and Pope Siricius<sup>77</sup> do not consider this an instance of levirate marriage. Furthermore, their explanation follows biblical law: levirate marriage is practiced only upon the death of a childless brother. Philip was definitely not childless and was possibly even still alive when Herod married his wife. Using these explanations, the Christian writers imply that, had this been a case of legitimate levirate marriage, John the Baptist would not have reproached Herod. We can therefore deduce from these comments the underlying assumption of the Christian commentators of this passage: they accept the biblical form of levirate marriage and its conditions—marriage only with the childless widow of a brother. These conditions provide the reasons to reproach Herod, but proper levirate marriage (according to its biblical form) is acceptable.

## RUTH

The Book of Ruth describes how Ruth, the widow of Naomi's son Mahlon, marries Boaz, a kinsman of Mahlon. Yet, in this account, the legal process differs to that outlined in Deuteronomy 25:

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Books, 1989), 330–31; Fitzmyer, *The Gospel According to Luke (I–IX)*, 476–478; Nolland, *Luke 1–9:20*, 155–57; Bovon, *Luke 1*, 127–28.

70 Josephus, *Antiquities of the Jews* 18.109 and 18.136; see also the discussion in Nikos Kokkinos, "Which Salome Did Aristobulus Marry?," *Palestine Exploration Quarterly* 118, no. 1 (1986): 33–50, at 39–42.

71 Tertullian, *Adversus Marcionem* 4.34.8–9, in Evans, *Adversus Marcionem*, 452–53.

72 Origen, *Matthew* 10.21, in *Origenes Matthäuseklärung*, ed. Erich Klostermann, *Die Griechischen Christlichen Schriftsteller* 40.10 (Leipzig: J. C. Hinrichs, 1935), 29, mentions the fact that Philip had a daughter, and was possibly even alive; similarly, see Origen, *Homilies on Luke* 27.3, in *Homélies sur s. Luc*, ed. and trans. Henri Crouzel, François Fournier, and Pierre Périchon, SC 87 (Paris: Éditions du Cerf, 1962), 346–47.

73 Eusebius, *Ecclesiastical History* 1.11.1, in Lake, *Ecclesiastical History*, 78–79, who cites Josephus, claiming that Herod divorced his own wife and forced Herodias to divorce Philip, enabling their marriage.

74 Jerome, *Matthew* 2.14.3–4, in Bonnard, *Commentaire sur saint Matthieu*, II (SC 242), 296–99.

75 John Chrysostom, *Matthew* 48.3–4 (PG 58), 489.

76 Ambrose, *Psalms* 35.13, in *Explanatio psalmodum xii*, ed. Michael Petschenig, CSEL 64 (Vienna: F. Tempsky, 1919), 58–59.

77 See Yves-Marie Duval, *La décrétale ad gallos episcopos: Son texte et son auteur* [The Decretal *ad Gallos episcopos*: Its text and composer], *Supplements to Vigiliae Christianae* 73 (Leiden: Brill, 2005), 38–41 and discussion at 100–02; Ursula Reutter, *Damasus, Bischof von Rom (366–84): Leben und Werk* [Damasus, Bishop of Rome (366–84): Life and work], *Studien und Texte zu Antike und Christentum* 55 (Tübingen: Mohr Siebeck, 2009), 203–04. The authorship and dating of this letter are debated. Duval, *La décrétale*, 1–7, reviewed previous research and argued that Damasus, the preceding pope, wrote this letter. Later, Christian Hornung, *Directa ad decessorem: ein kirchenhistorisch-philologischer Kommentar zur ersten decretale des Siricius von Rom* [*Directa ad decessorem*: A commentary of church history and philology on the First Decretal of Siricius of Rome], *Jahrbuch für Antike und Christentum. Kleine Reihe* 8 (Münster: Aschendorff, 2011), 267–83, claimed that it was written by Siricius. The difference in dating, however, is not significant; it was written toward the end of the fourth century.



And Boaz (Booz)<sup>78</sup> went up to the gate and sat down there, and right there, passing by, was the next-of-kin of whom Boaz had spoken. And Boaz said to him, “Come over, sit down here, Hidden One” and he went over and sat down. And Boaz took ten men of the elders of the city, and said, “Sit down here,” and they sat down. And Boaz said to the next-of-kin, “Concerning the portion of the field that belongs to our brother Abimelech, which has been given to Naomi (Nøeμiv), who returned from the countryside of Moab, I said, ‘I will uncover your ear, saying: buy it in the presence of those sitting here and in the presence of the elders of my people. If you are acting as next-of-kin, act as next-of-kin, but if you are not acting as next-of-kin, tell me, and I shall know; for there is no one except you to act as next-of-kin and I come after you.’” So he said, “I am the one, I will act as next-of-kin.” And Boaz said, “the day you acquire the field from the hand of Naomi and from Ruth (Povθ) the Moabite, the wife of the deceased, it is necessary for you to acquire her also in order to raise up the name of the deceased on his inheritance.” And the next-of-kin said, “I will not be able to perform the kinsman’s function for myself without ruining my inheritance. Take for yourself my right of inheritance, for I will not be able to act as next-of-kin.” And the statute in former times in Israel concerning the right of inheritance and concerning exchange: to confirm every agreement, a man would take off his sandal and give it to his neighbor who was acquiring the right of inheritance. This was an attestation in Israel. And the next-of-kin said to Boaz, “Acquire for yourself my right of inheritance,” and he took off his sandal and gave it to him. And Boaz said to the elders and all the people, “today you are witnesses that I have acquired everything of Abimelech’s and all that belongs to Chelaion, and Maalon from the hands of Naomi. I have also acquired Ruth, the Moabite, the wife of Maalon, for myself as a wife, to raise up the name of the deceased on his inheritance, and the name of the deceased shall not be extirpated from his brothers and from the clan of his people. Today you are witnesses.” And all the people who were at the gate said, “We are witnesses.” And the elders said, “may the Lord make your wife who is coming into your house like Rachel and like Leia, who built up, both of them, the house of Israel, and produced might in Ephratha and there shall be a name in Baithleem. And, through the offspring that the Lord will give you from this maidservant may your house be like the house of Phares whom Tamar bore to Iouda.”<sup>79</sup>

The legal background to the marriage of Ruth and Boaz differs to the Deuteronomic description of levirate marriage with respect to the degree of kinship, the significance of land inheritance, and the legal procedure. In Deuteronomy, only the brother of the deceased (the *levir*) is obligated to marry the widow. However, according to Ruth, the obligation passes on successively to the next-closest kinsman, should circumstances demand; and, furthermore, *any* kinsman may volunteer to take on the role. In this case, the closest kinsman refuses, allowing Boaz to step in and marry Ruth. Whereas Deuteronomy emphasizes passing on the name of the deceased, in Ruth not only is the name important but also the land inheritance bequeathed by the deceased to the widow. Furthermore, in Deuteronomy, the widow removes the shoe and spits on the *levir* who refuses to marry her, whereas according to the account in Ruth, this kinsman takes off his own shoe, passing it to the next of kin who agrees to the marriage, as a symbol of passing on the widow and the inheritance.<sup>80</sup>

78 For convenience, I have used the common spelling of the names Boaz, Ruth, and Naomi, rather than a transliteration of the Greek—Boos, Routh, and Noemin.

79 Ruth 4:1–12 (New English Translation of the Septuagint; minor changes to translation by author). The Septuagint was the text most Christian writers used, including Severus of Antioch. See, for example, Ruth 4:4 לְאִם תִּשְׁמַח לְרִדְתִּי : “if you are willing to redeem, redeem,” is translated in the Peshitta as אַחַד מִבְּנֵי אֲנִי (if you demand, demand), and in the Septuagint as εἰ ἀγγιστεύετε, ἀγγιστεύετε (if you are acting as next-of-kin, act as next-of-kin). Severus’s version is closest to that of the Septuagint: אֶחָד מִבְּנֵי אֲנִי (if you are the next-of-kin, be the next-of-kin). This phenomenon continues throughout Severus’s citations.

80 For further discussion, focusing mainly on the Hebrew biblical text, see Jack M. Sasson, *Ruth: A New Translation with a Philological Commentary and Formalist-Folklorist Interpretation* (Baltimore: Johns Hopkins University

As I have shown, rabbinic discussion of levirate marriage is based on the Deuteronomic description rather than that in Ruth. Moreover, although the *levir* inherits his brother's property, the rabbinic discussion focuses on the marital bond created by the death, rather than the inheritance. Likewise, the rabbinic description of the procedure draws on Deuteronomy rather than Ruth. In fact, Tannaitic and Amoraic citations of Ruth 4 tend to treat the marriage of Ruth and Boaz as a regular marriage; indeed, Ruth 4 serves as a basis for discussing the marriage benediction<sup>81</sup> and contract law,<sup>82</sup> but not levirate marriage. In opposition to the rabbis, Christians discuss this episode in more significant ways, as part of their dialogue regarding levirate marriage. For example, Severus of Antioch writes in his homilies,

[i]n the Law of Moses it was decreed that the wife of one who died childless will not be married to a foreigner, but the brother of the deceased, and the one who is born [to the new marriage] will be called the son of the deceased. It is good that we will hear the same divine words that are both laid in Deuteronomy and are said here: "If two brothers shall live together, and one of them dies and has no child, the wife of the deceased shall not marry outside, with one who is not a kinsman, the brother of the [deceased] man will come to her and take her to be his wife and live with her, and the son that she may bear will arise from the name of the deceased and his name will not be wiped out of Israel." If, however, the one who died childless does not have a brother, a different man from those related to him in [his] family will marry her, in order to raise seed to the deceased, as you have now heard. This son is considered [son] by law, and this kind of marriage is called relatives [marriage]. And if the family member who is related does not want to marry the wife of the deceased, as is proper, the next-of-kin in the family, by all means, will accept the marriage. The Law itself has a cure, to raise seed for the one who did not have sons and died.

These things are written clearly in Ruth, and this book is also one of the divine scriptures. A certain Boaz wanted to marry Ruth, who was the wife of a certain Mahalon, his relative who died childless. He [Boaz] said to the kinsman who is closer than him to the deceased "If you are the next-of-kin, be the next-of-kin, if you are not the next-of-kin, tell me and I shall know. There is no one but you who approached, and I am after you (Ruth 4:4)." And, when he did not want and said to him: "come and take my next-of-kin to your home, because I cannot approach [and marry her] (Ruth 4:6)," Boaz said again: "Therefore Ruth the Moabite, the wife of Mahalon, I am taking her to be my wife, to raise the name of the one who died from his brothers and his tribe (Ruth 4:10)."<sup>83</sup>

Like his predecessors, Severus accepts the classification of the son born to the widow and *levir* as a son by law. In the following sections, he adopts some of the additional motifs we encountered earlier, including the explanation of levirate marriage as a substitute for belief in the resurrection and the elucidation of Joseph's genealogies using levirate marriage.<sup>84</sup> To these explanations, however, he adds a description of the marriage of Ruth and Boaz, claiming that this, too, is a case of levirate marriage. Harmonizing the differences between this instance and the Deuteronomic levirate marriage, he argues that, if there is no living brother, the next-of-kin is required to step in. Boaz was not the closest relative, but once an even closer relative declined, he asked to marry Ruth and "raise the name" of the deceased.

Press), 102–57; Jeremy Schipper, *Ruth: A New Translation with Introduction and Commentary*, The Anchor Yale Bible 7D (New Haven: Yale University Press), 162–77.

81 *Babylonian Talmud*, Ketubbot 7a–7b; *Palestinian Talmud*, Ketubbot 1:1, 25a, in Academy ed., 954:32–34.

82 *Babylonian Talmud*, Baba Meši'a 7a; Baba Meši'a 47a; *Babylonian Talmud*, Niddah 45b.

83 Severus of Antioch, *Homily 95*, in Brière, *Les Homiliae cathedrales de Sévère d'Antioche: Homélie XCI à XCVIII* (PO 121), 80–82. (My translation.)

84 Severus of Antioch, *Homily 95*, in Brière, *Les Homiliae cathedrales de Sévère d'Antioche* (PO 121), 83–84.

Severus is not the only Christian writer to explain levirate marriage by drawing on Ruth 4. Such readings can be found in the fourth-century writings of Ambrose,<sup>85</sup> which outline the legal procedure according to the description in Ruth,<sup>86</sup> and John Chrysostom, who brings examples of levirate marriage using the stories of Ruth and Tamar.<sup>87</sup> Likewise, Theodor of Cyrus (393 CE–460 CE)<sup>88</sup> dedicates a lengthy discussion to the levirate marriage in Ruth, only hinting at the Deuteronomic practice.<sup>89</sup> The reason for preferring the description according to Ruth is twofold. First, Ruth was an ancestress of David, thus also Jesus, and consequently this is of significance to Jesus's Davidic lineage. Nevertheless, late antique Christian literature does not dedicate extensive discussions to the book of Ruth in this context (or in other contexts), and therefore this cannot be the sole reason.<sup>90</sup> Second, and more importantly, levirate marriage as described in Ruth is not only different from the Deuteronomic description, but these differences actually make it significantly closer to the description of the *epiklerate*, a Greek legal institution. According to early Greek legal traditions, if a man died leaving only a daughter, this orphan heiress (ἐπίκληρος) would be married to her father's next of kin—usually his brother—bringing with her the property she inherited and ensuring it remained in the hands of her father's clan.

While this practice is known from the classical world, especially Athens,<sup>91</sup> it is also found in late antique Greek sources, albeit sparsely. It was probably not obligatory, and there is evidence of orphaned girls whose uncle was their guardian rather than their husband.<sup>92</sup> Nevertheless, the term the ancient Greeks used to describe the heiress, ἐπίκληρος, is used in late antiquity in this context. Following the classical texts, late antique lexicographers mention it, emphasizing the inheritance rather than the marriage obligation.<sup>93</sup> More importantly, it appears in Christian sources describing a lone

85 Ambrose, *De fide* 3.10.69, in *De fide ad Gratianum Augustum*, CSEL 78, ed. Otto Faller, *Corpus scriptorum ecclesiasticorum latinorum* 78 (Vienna: F. Tempsky, 1962), 133–34; Ambrose, *Psalms* 43.64, in Petschenig, *Explanatio psalmodum xii* (CSEL 64), 307.

86 Ambrose, *Luke* 3.31–34, in Tissot, *Traité sur l'Évangile de S. Luc* (SC 45), 137–39.

87 John Chrysostom, *Matthew* 70.2 (PG 58), 657.

88 Jean-Noël Guinot, "Theodoret Von Kyrrhos," in *Theologische Realenzyklopädie* [Theological encyclopedia], ed. Gerhard Müller, 36 vols. (Berlin: De Gruyter, 2001), 33:250–54.

89 Theodoret of Cyrus, "The Questions on Ruth," in *The Questions on the Octateuch*, vol. 2, *On Leviticus, Numbers, Deuteronomy, Joshua, Judges, and Ruth*, ed. and trans. John F. Petruccione and Robert C. Hill (Washington, DC: Catholic University of America, 2007), 362–375, at 368–75.

90 A brief survey of *Biblia Patristica: Index des citations et allusions bibliques dans la littérature patristique* [Index of biblical citations and allusions in patristic literature], ed. Jean Allenbach et al., 7 vols. (Paris: Centre National de la Recherche Scientifique, 1975–2000), yields only a few citations of Ruth. Nevertheless, within these, a considerable number refer to Ruth's Moabite lineage (for example, 1:4, 22) or to her marriage in chapter 4.

91 Regarding the *epiklerate* in ancient Greece, see Alice Robin Walsham Harrison, *The Law of Athens*, 2 vols. (Oxford: Clarendon Press, 1968), 1:132–08, 309–11; Walter Kirkpatrick Lacey, *The Family in Classical Greece* (Ithaca: Cornell University Press, 1968), 139–45; Sarah B. Pomeroy, *Goddesses, Whores, Wives, and Slaves: Women in Classical Antiquity* (New York: Schocken Books, 1975), 40–41, 6–62; David M. Schaps, *Economic Rights of Women in Ancient Greece* (Edinburgh: Edinburgh University Press, 1979), 25–47. I thank Professor Uri Yiftach for this reference.

92 See, for example, the papyrus P. Cairo Isid. 77 from 320 CE, published in *The Archive of Aurelius Isidorus in the Egyptian Museum, Cairo, and the University of Michigan (P. Cair. Isidor.)*, ed. Arthur E. R. Boak and Herbert Chayyim Youtie (Ann Arbor: University of Michigan Press, 1960).

93 Harpocration, *Lexicon in decem oratores atticos* [Lexicon of ten Attic orators], ed. Wilhelm Dindorf, 2 vols. (Groningen: Bouma's Boekhuis, 1969), Ἐπίδικος 1:123–24; Dionysius, *Attika onomata* [Attic names], in *Untersuchungen zu den attizistischen Lexika* [Investigations to the Attic lexica], ed. Hartmut Erbse (Berlin: Akademie-Verlag, 1950), ἐπίκληρος; Moeris, *Moeridis atticista*, in *Ps.-Herodian, de Figuris / Das Attizistische Lexikon Des Moeris*, ed. Kerstin Hajdú and Dirk U. Hansen, *Sammlung griechischer und lateinischer Grammatiker* 9 (Berlin: De Gruyter, 1998), 71–156, at 98, ἐπίκληρος; Julius Pollux, *Onomasticon* 3.33, in

heirress (without mentioning an obligation to marry a kinsman),<sup>94</sup> and is also known from fourth-century Syria. Indeed, Libanius (314 CE–393 CE) complains, “I had no luck at all. No friend made me his heir . . . I had no claim to an heirress (ἐπικλήρου),” referring to marriage that is accompanied by an inheritance.<sup>95</sup> Nevertheless, the *epiklerate*, to which Philo may have alluded,<sup>96</sup> was probably unknown to the Palestinian rabbis, as is evident from the *Sifra*. This Tannaitic midrash annuls the similar biblical law, according to which a daughter may inherit her father’s property but must marry a tribe member to keep the inherited land within the tribe.<sup>97</sup>

Just as Julius Africanus and his successors portray biblical levirate marriage using Roman legal concepts, so too does Severus depict levirate marriage using the biblical description closest to that familiar in the Greek east—the *epiklerate*. Unlike the Deuteronomic description, and similarly to that found in Ruth, the *epiklerate* does not refer only to the first kinsman—either the Israelite brother or the Greek uncle—but merely accords them priority within a hierarchy of kinsmen. Furthermore, the *epiklerate*, just like the description in Ruth and in contrast to the description in Deuteronomy, focuses on the inheritance accompanying the marriage, rather than the marriage itself. Thus, Severus of Antioch and other Christian writers apparently portray biblical levirate marriage differently to their Jewish neighbors, utilizing the Greco-Roman legal traditions.

#### DEUTERONOMY 25:5–10

The phenomenon to which Severus alluded in his discussion of Ruth, and Julius Africanus alluded in contemplating Jesus’s genealogy—namely, the acceptance of biblical levirate marriage and its portrayal following Greek and Roman legal institutions of inheritance—becomes even clearer in direct discussions of the main biblical source regarding levirate marriage: Deuteronomy 25:5–10. This, however, is not the whole picture, and these verses also serve as a basis for some writers to *prohibit* levirate marriage.

Christian writers cite Deuteronomy 25:5–10 in their discussions on levirate marriage in Christological and allegorical commentaries as well as in those focusing on its legal aspects. In

*Pollucis onomasticon*, ed. Erich Bethe, 3 vols. (Leipzig: B. G. Teubner, 1900), 1:165; Timaeus, *Lexicon Platonicum Παπρούχου παρθένου*, in *I lessici a Platone di Timeo Sofista e Pseudo-Didimo*, ed. Stefano Valente, Sammlung griechischer und lateinischer Grammatiker 14 (Berlin: De Gruyter 2012), 180; Hesychius, ε236, ε4865, in *Hesychii Alexandrini Lexicon*, vol. 2 [Epsilon]–[Omikron], ed. Kurt Latte (Hauniae: E. Munksgaard, 1966), 9, 159.

94 Procopius, *Historia arcana* 5.20, in *The Anecdota or Secret History*, ed. and trans. Henry Bronson Dewing, LCL 290 (Cambridge, MA: Harvard University Press 1969), 6:60–63; Procopius, *Historia arcana* 29.17–25, in Dewing, *Anecdota*, 6:338–43; Alciphron, *Letters* 1.6, in *The Letters of Alciphron, Aelian and Philostratus*, ed. and trans. Allen Rogers Benner and Francis H. Fobes, LCL 383 (Cambridge, MA: Harvard University Press, 1949), 38–341, at 50–51; Alciphron, *Letters* 3.28, in Benner and Fobes, *The Letters of Alciphron, Aelian and Philostratus*, 220–21.

95 Libanius, *Declamations* 32.1.7, my translation, following that of Donald Andrew Russell, *Libanius: Imaginary Speeches* (London: Duckworth, 1996), 149. For dating, see Russell, *Libanius*, 1–15.

96 Philo, *Laws* 2.126, in *Philo*, vol. 7, ed. and trans. Francis Henry Colson, LCL 320 (Cambridge, MA: Harvard University Press, 1937), 380–81.

97 *Sifra* Emor 4.3; *Babylonian Talmud*, Baba Batra 120a; *Babylonian Talmud*, Ta’anit 30b. For the similarity and differences between *epiklerate* and the biblical levirate law, see Marilyn A. Katz, “Patriarchy and Inheritance in Greek and Biblical Antiquity: The Epiclerate and the Levirate,” *Proceedings of the World Congress of Jewish Studies* 10 A (1990): 159–66; Raphael Sealey, *The Justice of the Greeks* (Ann Arbor: University of Michigan, 1994), 83–89. Cf. Satlow, *Jewish Marriage*, 186–89, 343–45, who claimed that the rabbinic explanation of Levirate marriage is that of the *epiklerate*.

all cases, Christian writers continue to follow the biblical description of levirate marriage. The Christological commentaries include Origen's claim that levirate marriage is analogous to the choice between the old and unfruitful law (Old Testament), on the one hand, and the new law (New Testament), on the other;<sup>98</sup> Jerome's comparison of loosening the sandal (*ḥaliza*) with John the Baptist's refusal to loosen the sandal of Jesus, the Bridegroom;<sup>99</sup> and Ambrose's claim that levirate marriage is analogous to Jesus, who will bring life to the seed of his deceased brother. He proves that Jesus is the Bridegroom because both Moses and Joshua were required to take off their sandals, as was the man who refused to marry his widowed sister-in-law.<sup>100</sup>

Two Latin Christian writers and two Greek Christian writers address the question of biblical levirate law focusing on its practice. The two Latin Christian writers—Tertullian, writing at the beginning of the third century,<sup>101</sup> and Pope Siricus, toward the end of the fourth—utilize Deuteronomy 25:5–10 not only to discuss the concept and exegesis of levirate marriage but also to reject the practice and, on this basis, other forms of marriage. By contrast, yet like the previously discussed sources, the two Greek Christian writers—Theodoret of Cyrrus and an anonymous fifth-century author, incorrectly identified as Justin Martyr—accept the biblical levirate marriage, albeit with adaptations.

Tertullian of Carthage was well acquainted with Roman law and legal thinking in general.<sup>102</sup> In his treatise *De monogamia*, he claims that remarriage is forbidden, including remarriage following both divorce and widowhood. Prohibiting remarriage, however, contradicts the biblical commandment on levirate marriage. To differentiate between the biblical law and his own prohibition of remarriage, Tertullian argues that the biblical law is based on the commandment to “grow and multiply,” the responsibility of children to pay for the fathers' sins, and the disdain with which childless people were regarded. In his time, however, the commandment to “grow and multiply” and the punishment of sons for their fathers' sins became void. Likewise, eunuchs were no longer considered disgraceful; they were even honored. As a result, levirate marriage was no longer relevant. Furthermore, based on the annulment of levirate marriage, Tertullian deduced that not only may the childless widow not remarry: no widows may remarry. He claimed that a Christian widow

98 Origen, *Matthew* 17.31, in Klostermann, *Origenes Matthäuseklärung* (GCS 40.10), 672–78.

99 Jerome, *Matthew*, 1.3.11, in Bonnard, *Commentaire sur saint Matthieu* (SC 242), 92–93, on the basis of Matthew 3.11 and Luke 3.16.

100 Ambrose, *De fide* 3.10.69–71, in Faller, *De fide ad Gratianum Augustum* (CSEL 78), 133–35 using Exodus 3:5 and Joshua 5:16. See also Ambrose, *Luke* 3.15, in Tissot, *Traité sur l'Évangile de S. Luc* (SC 45), 127–28; Ambrose, *Psalms* 43.64, in Petschenig, *Explanatio psalmodum xii* (CSEL 64), 307.

101 For the dating of Tertullian's various works to the beginning of the third century, see Timothy D. Barnes, *Tertullian: A Historical and Literary Study* (Oxford: Oxford University Press, 1985), 30–48.

102 Tertullian preserves legal traditions that are similar to Roman law, as Gillian Clark and David Hunter have shown; see Gillian Clark, “‘Spoiling the Egyptians’: Roman Law and Christian Exegesis in Late Antiquity,” in *Law, Society, and Authority in Late Antiquity*, ed. Ralph W. Mathisen (Oxford: Oxford University Press, 2001), 133–47, at 137–38; David G. Hunter, “Marrying and the *Tabulae Nuptiales* in Roman North Africa from Tertullian to Augustine,” in *To Have and to Hold: Marrying and its Documentation in Western Christendom, 400–1600*, ed. Philip Lyndon Reynolds and John Witte (Cambridge: Cambridge University Press, 2007), 95–113, at 99–102. This resemblance led to a discussion of the possibility that Tertullian, the Christian writer, was actually a jurist, or even the Roman jurist Tertullianus. For further discussion, see Barnes, *Tertullian*, 22–29; David Rankin, “Was Tertullian a Jurist?,” *Studia Patristica*, no. 31 (1997): 335–42; and Jill Harries, “Tertullianus & Son?,” in *A Wandering Galilean: Essays in Honour of Seán Freyne*, ed. Zuleika Rodgers, Margaret Daly-Denton, and Anne Fitzpatrick-McKinley, Supplements to the Journal for the Study of Judaism 132 (Leiden: Brill, 2009), 385–99. While it is not clear that Tertullian was, indeed, Tertullianus the jurist, the sources supporting this claim surely serve as evidence regarding his broad legal knowledge.

who marries a Christian man, in fact, marries a “brother”—because all Christians are brothers—and hence enters into a forbidden levirate union.<sup>103</sup>

Another Latin writer who addresses levirate marriage as it is described in Deuteronomy, explaining its current irrelevance, is Pope Siricus. In his letter to the bishops of Gaul, he follows the Roman jurists, drawing a parallel between levirate marriage and sororate marriage, and uses the prohibition on the former to explain the prohibition on the latter:

On one who married the sister of his [deceased] wife, it is written in the law of the Old Testament that in order to raise the seed of his deceased brother he must marry his [brother’s] wife, but only if he did not leave any children from her. For this reason, namely, John the Baptist spoke against Herod, because he was not allowed to take the wife of [his] brother who left children. Nevertheless, regarding male procreation, the constitution of the law decreed that this will be done by the man. As for women, truly, it is never read, but it is strongly presumed. For the Law says: “cursed is he who sleeps with the sister of his wife.”<sup>104</sup> Is it not Jacob, who had two wives at the same time, sisters for the sake of mystery, and two concubines; and all those who were born [to the sisters and concubines] were called patriarchs? Now it is not permitted to a Christian to have [such marriage]. Did they [the patriarchs] not have wives and concubines? But now [our] Testament does not tolerate that this will happen, where purity is discussed more, and chastity is praised, as Christ learned and said: “Not all can grasp the Word of God, but those it is given to.”<sup>105</sup>

Pope Siricus draws on two particular motifs to forbid levirate marriage in the Christian community. Similarly to the Roman emperors and Basil of Caesarea, he too ties levirate marriage to sororate marriage. And like the Christian biblical commentators who discussed levirate marriage, he too links the biblical levirate law to the story of John the Baptist, claiming that Herod was reproached because he married his brother’s wife, even though his brother had fathered a child. In this way, Pope Siricus deduces that, just as sororate marriage was permitted to Jacob the Patriarch, yet is currently forbidden to Christians (following the later biblical prohibition of sororate marriage), so too Christians are forbidden to practice levirate marriage, even though it was allowed in the Old Testament.

Thus, the Latin Christian writers Tertullian and Pope Siricus prohibited levirate marriage and explained the prohibition within the context of matrimonial law rather than inheritance law. In fact, the explanation given by Pope Siricus, living at the time of the Roman and Christian prohibition on levirate marriage, is similar to these prohibitions, and he utilizes his biblical exegesis to defend the Roman prohibition, which tied sororate marriage to levirate marriage.

This, however, is not the picture arising from Greek Christian writers who cited Deuteronomy 25:5–10 and addressed levirate marriage directly. Rather, these writers followed the two phenomena we have seen in the Christian biblical exegesis, which mentions levirate marriage indirectly. Indeed, like the Latin writers, the Greek writers used biblical motifs and explained the current irrelevance of the biblical levirate law. However, unlike the Latin writers, they were more open to the biblical levirate law and did not reject it altogether. More importantly, like the Christian biblical exegetes discussed earlier, who mentioned levirate marriage indirectly, the Greek Christian writers who addressed levirate marriage directly also constructed their description of this practice within

103 Tertullian, *De monogamia* 7, in *Le Mariage unique*, SC 343, ed. Paul Mattei (Paris: Éditions du Cerf, 1988), 156–63. For a similar claim, see Tertullian, *De monogamia* 16.4–5, in Mattei, *Le Mariage unique* (SC 343), 202–05.

104 Leviticus 18:18 structured on the model of Deuteronomy 27:15–26.

105 Duval, *La décrétale ad gallos episcopos*, 38–41, and discussion at 100–02; Reutter, *Damasus, Bischof von Rom*, 203–04. (My translation.)

inheritance law, using Greek legal traditions in addition to Roman law, rather than constructing it within matrimonial law, as did the Latin writers.

In the middle of the fifth century, in the genre of questions and answers, two authors addressed the question of levirate marriage. Theodoret of Cyrus, in his *Questions on the Octateuch*, provides a brief discussion of the Deuteronomic levirate law, explaining the need for humiliation in the case of refusal as being due to a lack of natural brotherly love.<sup>106</sup> At approximately the same time, the anonymous author of the *Quaestiones et responsiones ad orthodoxos*, incorrectly attributed to Justin Martyr, answers to a question regarding the legitimacy of levirate marriage:<sup>107</sup>

Question 132:

If, according to the law of Moses, the brother of one who died childless takes the wife of the departed and has children from her, [they are] his according to nature, yet his brother's according to law, so if it happens that the remaining brother already has a wife, does he marry the wife of his deceased brother with her [his current wife]? And how is this not unnatural? And if such a woman happens to be barren, how will the [second] marriage not bring useless [marriage] upon the unnatural [first marriage], and how does the command of the law explain from all sides the difficulty, that the deceased will not receive his memory by child bearing? What help will there be to the deceased, to be called by name through child making of another after the death of the father [who is married to] an alien wife?

Answer:

The law does not prevent the Israelites from taking a wife if they want to, not only a kinswoman, but also a captive and a concubine. The law also does not prevent the unnatural, nor does it prevent the remaining brother of the deceased from taking with [his current] wife another wife. All the absurdity is based on the transgression of the law. And if it happens that the wife of the deceased is barren, but it could be unknown to the wife, to the unknown it is impossible to transgress or overlook the law. This law was set so that the death will be taken from the deceased, that is, of the fatherhood and the heir, that is what he handed over by the providence of the law. If because of the memory people have come to the inheritance at the wedding, it is clear that in this way God is encouraged to offer this to people, that the deed will not be useless. In this law there is also something else that is useful, so that because of this marriage the heir will stay in this same tribe and not move to another tribe. And since once the woman was united with her first husband, she became one body [with him], by that the deceased will not become a father to alien children, but [father] of a child who is out of his own body, just as the child out of this union is called by the name of the deceased, so too the wife of the other is called a wife.<sup>108</sup>

Following his predecessors, the author distinguishes between the *levir*, to whom he refers as the father by nature, and the deceased, whom he calls the father by law, and asks questions regarding the polygamy of the *levir* and the type of continuity given to the deceased if the child born to him is not his biological son. In response, the writer first claims that biblical law allows polygamy. Second, he addresses the question of the marriage's purpose, assuming marriage is allowed for begetting

106 Theodoret of Cyrus, "Questions on Deuteronomy," in Petruccione and Hill, *The Questions on the Octateuch*, 2:170–259, at 222–23.

107 For a survey of research on the false attribution to Justin Martyr, and the dating to mid-fifth-century Syria, see Peter Toth, "New Questions on Old Answers: Towards a Critical Edition of the *Answers to the Orthodox* of Pseudo-Justin," *Journal of Theological Studies* 65, no. 2 (2014): 550–99. For further discussion regarding the genre of Questions and Answers, see Yannis Papadoyannakis, "Instruction by Question and Answer: The Case of Late Antique and Byzantine Erotapokriseis," in *Greek Literature in Late Antiquity: Dynamism, Didacticism, Classicism*, ed. Scott Fitzgerald Johnson (London: Routledge, 2016), 91–105.

108 *Quaestiones et Responsiones ad Orthodoxos* 132, in *Corpus apologetarum Christianorum saeculi secundi*, vol. 5, ed. J. C. T. Otto (Jena: Mauke, 1881), 482–83. (My translation).

children, a claim common in late antique Christian communities.<sup>109</sup> Third, he explains the importance of levirate marriage and describes it as an inheritance strategy, which seeks to “take away the death from the deceased,” a function usually accorded to the resurrection in Christian sources. And fourth, using Genesis—or its citation in Mark, “a man shall leave his father and mother and be joined to his wife, and they shall become one flesh,”<sup>110</sup> the verse usually cited to explain the prohibition on divorce—the writer claims that because the woman became one flesh with her husband, she and her children, too, are part of his tribe.

The writer uses motifs that his predecessors employed regarding levirate marriage, in addition to those common in the Christian discourse on marriage. However, he includes two additional aspects: the inheritance conferred at the wedding and the importance of remaining in the same tribe. These motifs are not well suited to the problem levirate marriage seeks to solve. First, in contrast to the author’s claim, inheritance is usually not given at the wedding, but rather upon death. Second, in levirate marriage there is no problem of children and inheritance moving to a different tribe, because the widow, who is not necessarily of the same tribe, does not inherit her husband’s property or have a son who may receive his father’s inheritance. These two motifs can be understood only if we assume that the author is not thinking of the biblical levirate marriage but rather of the *epiklerate*. According to the *epiklerate*, the newly wedded husband receives the inheritance upon marrying the orphan heiress (*epikleros*), not at the time of death; in fact, he cannot receive the inheritance without the marriage. Furthermore, the main goal of this practice is that the inheritance remain in the same tribe, and the heiress’ children are deemed the direct heirs of her father—their deceased grandfather—through her bloodline, rather than children of their biological father. This goal and description correlate with the source cited above, according to which the children of the wife are heirs of the deceased husband, through their mother’s body.<sup>111</sup>

If this reading is correct, in addition to the role that Roman law played in restructuring the concept of levirate marriage during late antiquity, we must note the function of Greek legal traditions, especially the *epiklerate*. This is alluded to in the preference for Ruth and in the interpretation of Deuteronomy 25:5–10 according to Ruth. It is also evident in the aforementioned description of Deuteronomic levirate marriage according to the principles of the *epiklerate*, combined with common Christian motifs on marriage and asceticism. The Greek commentators of Deuteronomy 25:5–10, and especially the author of the *Quaestiones et responsiones ad orthodoxos*, continue, therefore, the trend we have seen in the indirect comments on levirate marriage. They, too, do not oppose levirate marriage altogether, and describe it as part of inheritance law rather than matrimonial law, although they utilize a Greek legal concept rather than a Roman one. Furthermore, they stand in

109 On the tension between promoting asceticism, as in the writings of Tertullian and Origen, and the endorsement of marriage, especially for the purpose of begetting children, see, among others, David G. Hunter, “The Reception and Interpretation of Paul in Late Antiquity: 1 Corinthians 7 and the Ascetic Debates,” in *The Reception and Interpretation of the Bible in Late Antiquity: Proceedings of the Montréal Colloquium in Honour of Charles Kannengiesser, 11–13 October 2006*, ed. Lorenzo di Tommaso and Lucian Turcescu, *Bible in Ancient Christianity* 6 (Leiden: Brill, 2008), 163–91.

110 Genesis 2:24; Mark 10:9.

111 The *epiklerate* has been discussed in comparison to Numbers 27:1–11, the case of the daughters of Zelophehad. As their father had no sons, they as daughters inherit his property but must marry their kinsmen to ensure that the inheritance remains within their tribe. In this case, however, there is no claim that the daughters’ children are the heirs of the deceased. Rather, they are the heirs of their fathers, who inherit the property from their wives, the daughters of Zelophehad. For further discussion on the difference between *epiklerate* and the biblical levirate law, see Katz, “Patriarchy and Inheritance”; Sealey, *The Justice of the Greeks*, 83–89.



contrast to the Latin writers, namely Tertullian and Pope Siricus, who discussed levirate marriage as part of matrimonial law and rejected it.

## DISCUSSION AND CONCLUSIONS

Inheriting the biblical legal institution of levirate marriage and adapting it to the late antique world was no simple task. Biblical levirate marriage can be understood either by focusing on the aspect of matrimony or focusing on the aspect of inheritance, as did the rabbis and Christians, respectively. On the one hand, the rabbis understood levirate marriage as part of matrimonial law and sought to cast it according to the marriage common in the halakhic system. Their fundamental text for describing levirate marriage was Deuteronomy 25:5–10, to which they were committed, but they altered it significantly and sought to minimize it via the application of various hermeneutical methods and halakhic preferences. On the other hand, Christian writers accepted the description of Deuteronomy 25:5–10 in addition to Ruth 4, yet applied Greek and Roman legal concepts to explain the biblical legal institution—legal concepts that are part of the paradigm of inheritance law and parental relations, rather than matrimonial law. Furthermore, they did not limit levirate marriage in any way, as the rabbis did; in fact, they even expanded the number of scenarios categorized as levirate marriage.

The adaptation of the biblical legal institution in Christian literature serves as an interesting example of a legal transplant. At first glance, we could claim that Christians in the Roman Empire portray levirate marriage according to its biblical description, rather than its contemporaneous rabbinic description, because they preserve the tie between levirate marriage and inheritance law, and neither seek to minimize the cases in which the biblical levirate marriage is applicable, nor change the role of the *levir*. This claim seems to correlate with Alan Watson's theory of law as an isolated phenomenon, disconnected and uninfluenced by other factors, in which a rule may be transferred directly from one system to another. In this case, many of the Christians adopted the biblical description of levirate marriage, transferring it to the Christian legal discourse, even though it did not correlate with the Christian attempt to minimize marriage altogether.<sup>112</sup>

However, a closer investigation demonstrates that Christian literature reshaped the biblical institution of levirate marriage in significant ways. It described the practice according to the Roman notion of adoption and the Greek concept of the *epiklerate*, resulting in the portrayal of a renewed legal institution, and significantly strengthened the linkage to inheritance law. The biblical levirate law is therefore not an isolated rule, transferred from the Old Testament into late antique Christianity; rather, it is a legal tradition that was reshaped in a new setting, influenced by the Greco-Roman and Christian habitat. It thus serves as a case study for describing developments

112 Alan Watson has discussed legal transplants on several occasions. For his main discussion, see Alan Watson, *Legal Transplants: An Approach to Comparative Law* (Edinburgh: Scottish Academic Press, 1974). Likewise, he has argued that law is not influenced by society, mainly focusing on Roman law. For this claim, see the following: Alan Watson, *The Making of the Civil Law* (Cambridge, MA: Harvard University Press, 1981); Alan Watson, *Sources of Law, Legal Change, and Ambiguity* (Philadelphia: University of Pennsylvania Press, 1984); Alan Watson, *Society and Legal Change* (Philadelphia: Temple University Press, 2001); Alan Watson, "Legal Change: Sources of Law and Legal Culture," *University of Pennsylvania Law Review* 131, no. 5 (1983): 1121–57; Alan Watson, *The Spirit of Roman Law, The Spirit of the Laws 1* (Athens: University of Georgia Press, 1995); Alan Watson, "Law and Society," in *Beyond Dogmatics: Law and Society in the Roman World*, ed. John W. Cairns and Paul J. du Plessis, *Edinburgh Studies in Law* 3 (Edinburgh: Edinburgh University Press, 2007), 9–35.

in understanding biblical law that result from the new Greco-Roman context.<sup>113</sup> Furthermore, as Pierre Legrand has argued, because the host Greco-Roman legal culture interpreted the biblical legal tradition using its own legal concepts, “the transplant does not, in fact, happen: a key feature of the rule—its meaning—stays behind.”<sup>114</sup> Indeed, a key feature of levirate marriage—namely, its significance for matrimonial law and its role in perpetuating the deceased—did remain intact; the biblical law, which supposedly served as the source of the Christian discourse, is actually a Greco-Roman version of it, removed from its origin in certain aspects. What conclusions, then, might we draw from this analysis? I wish to emphasize three points in particular regarding the Christian discourse on biblical levirate marriage and its relationship to its Jewish setting, on the one hand, and to the inner-Christian discourse, on the other.

### *Jewish versus Christian Adaptations of a Biblical Institution*

First, while levirate marriage originated in the Old Testament, which both Christians and Jews of late antiquity identified with Judaism, the analysis of late antique sources has revealed barely any influence or direct polemic between Jews and Christians concerning this question.<sup>115</sup> As in other cases, here too, the Christian identification of levirate marriage as a Jewish tradition, particularly in the discussion of levirate marriage and the resurrection, does not imply that it refers to contemporaneous Jews or an active polemic. Rather, it can be understood as part of the inner-Christian discourse regarding its biblical heritage.<sup>116</sup>

113 Concerning this term in understanding Watson’s theory, see especially William Ewald, “Comparative Jurisprudence (II): The Logic of Legal Transplants,” *American Journal of Comparative Law* 43, no. 4 (1995): 489–510.

114 Pierre Legrand, “The Impossibility of Legal Transplants,” *Maastricht Journal of European and Comparative Law* 4, no. 2 (1997): 111–24. Legrand wrote this paper as a response to Watson’s description of legal transplants, which led to a vehement debate on this concept. While Legrand did not necessarily describe Watson’s claims accurately, he nevertheless highlighted the importance of noting the significant changes in legal traditions when transferred to a different habitat. For a review of this debate and further bibliography, see the edited collection by David Nelken and Johannes Feest, *Adapting Legal Cultures* (Oxford: Hart, 2001) and the recent survey by Beata Kviattek, “Explaining Legal Transplants: Transplantation of EU Law into Central Eastern Europe” (PhD diss., University of Groningen, 2015), 47–82.

115 Regarding the problem of *parallelomania* (a surplus of untested claims concerning parallels), see the fundamental article of Samuel Sandmel, “Parallelomania,” *Journal of Biblical Literature* 81, no. 1 (1962): 1–13. Six years later, Bernard Jackson expressed similar warnings regarding comparative law; see Bernard S. Jackson, “Evolution and Foreign Influence in Ancient Law,” *American Journal of Comparative Law* 16, no. 3 (1968): 372–90. In response, Howard Eilberg-Schwartz emphasized the importance of comparative studies, to understanding the similar ways remote cultures develop, even if not influenced by one another. See Howard Eilberg-Schwartz, *The Savage in Judaism: An Anthropology of Israelite Religion and Ancient Judaism* (Bloomington: Indiana University Press, 1990), 87–102. On the comparable phenomenon of *polemomania* (a surplus of ungrounded claims concerning polemics), see Alon Goshen-Gottstein, “Polemomania: Methodological Reflection on the Study of the Judeo-Christian Controversy between the Talmudic Sages and Origin over the Interpretations of the Song of Songs,” *Jewish Studies*, no. 42 (2003–2004): 119–90. Israel Yuval responded to this claim, warning against *parallelophobia*, which leads to overlooking hidden polemics and the historical context in which these sources were written; see Israel Jacob Yuval, “Christianity in Talmud and Midrash: Parallelomania or Parallelophobia?” in *Transforming Relations: Essays on Jews and Christians throughout History in Honor of Michael A. Signer*, ed. Franklin T. Harkins (Notre Dame: University of Notre Dame Press, 2010), 50–74.

116 For this phenomenon, especially in the east, see, for example, Christine Shepardson, “Anti-Judaic Rhetoric and Intra-Christian Conflict in the Sermons of Ephrem Syrus,” *Studia Patristica*, no. 35 (2001): 502–07; Christine

This lack of direct polemic in the exegetical and theological discourse, and the distance between the Christian theoretical portrayal of levirate marriage and the rabbinic practice, highlight the difference between the rabbinic and Christian responses to their mutual legal inheritance. This can be explained by variances in practice and observance. The rabbis treated levirate marriage as an active legal requirement; as such, it raised various difficulties for the parties involved and the halakhic system. Consequently, attempts to minimize it constituted part of the endeavor to contain it within the halakhic system. The Christians, however, did not view levirate marriage as obligatory, although some may have practiced it. Thus, they did not need to minimize the basic biblical description, even though it contradicts various Christian claims regarding marriage and asceticism. Rather, they could utilize biblical levirate marriage as a basis for discussing theological questions, such as Jesus's genealogy and the resurrection.

Moreover, levirate marriage did not evolve in Roman law and Greek legal traditions, because these traditions developed other inheritance strategies. The Roman jurists developed the concept of adoption and the Greeks fostered the *epiklerate*, two legal institutions intended to solve the exact same problem: how to safeguard the inheritance of those who did not beget a male heir. Adoption, *epiklerate*, and levirate marriage were therefore originally separate and even competing legal institutions. Only later, when Greek- and Latin-speaking Christians living in a Greco-Roman culture interpreted the concept of levirate marriage they had inherited from the Old Testament, did they apply the contemporaneous legal concepts of adoption and the *epiklerate* to explain levirate marriage. This adaptation of the biblical legal institution enabled the Christian writers to comprehend levirate marriage and also accept it, not as a Jewish law, nor as part of the halakha that Paul abolished or the biblical tradition that allowed polygamy, but rather as a partially familiar legal institution that could serve as a basis for theological and even legal discussions of Jesus, the resurrection, and biblical matrimonial law.

### *Legal versus Exegetical and Theological Christian Discourse*

The second principal conclusion I would like to emphasize is that the Christian discourse on levirate marriage is not unified. While Christians writing within the legal discourse, such as Basil of Caesarea, Pope Siricus, the bishops of the councils and even Tertullian, discuss levirate marriage as part of matrimonial law, accept the Roman prohibition on this practice and clearly forbid it, this prohibition is not only weakened by the Syriac legal sources, but disappears almost entirely in the exegetical and theological discourse, in both east and west, and the discussion is not part of matrimonial law but inheritance law. This disparity can lead to two conclusions: one could surmise that the use of levirate marriage in the theological and exegetical discourse, its contemporaneous adaptation and especially the lack of objection to it support the claim that a version of levirate marriage was known in the Christian communities of the eastern Roman Empire,<sup>117</sup> and explain the limited ban in Syriac literature. Had all Christians of the eastern Roman Empire prohibited levirate marriage, especially in its Greek and Roman adaptation, it would not have been used in such a positive way, and the legal sources would not have objected to it so explicitly.

Alternatively, we might argue that the theological discourse not only provides evidence regarding Christian tolerance of levirate marriage, it actually explains it in three different ways. The first explanation is that applying the concept of levirate marriage to discussions of Jesus's genealogies began with the letter of Julius Africanus in the third century, prior to the earliest bans on levirate

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Shepardson, *Anti-Judaism and Christian Orthodoxy: Ephrem's Hymns in Fourth-Century Syria*, Patristic Monograph Series 20 (Washington, DC: Catholic University of America Press, 2008).

117 For a similar claim, based on the Roman sources, see Colantuono, "Note sul canone 2 del concilio di Neocesarea."

marriage. Could this discourse have prevented stricter bans and objections to levirate marriage, because Joseph himself was an offspring of this practice? The second explanation is that clothing biblical levirate marriage in Greek and Latin attire enabled the late antique Christians to accept it, as they accepted other Greek legal traditions and Roman law. The third, and most important, explanation is that the difference between the legal discourse and the theological discourse not only centers on the question of prohibition versus acceptance; rather, it is focused on the question of the very legal field in which to understand levirate marriage. While the legal discourse—that of the Romans and bishops and that of the rabbis—positioned levirate marriage as part of matrimonial law and prohibited or encouraged marital unions, the theological discourse positioned it as part of paternal relations and inheritance law, together with other inheritance strategies. It is therefore not surprising that the Roman and Christian prohibition on levirate marriage was discussed in modern scholarship in relation to rabbinic halakha, whether it was understood as a polemic or not.

However, as I have shown, when understood as Christians outside the legal discourse saw it, as an inheritance strategy, the question of polemic, influence, or discourse becomes less relevant. Though speaking about similar institutions, the Jews and Christians are speaking in two different contexts, one of marital relations and another of parental relations, and these two discourses seem not to interact.

### *Biblical Traditions Remodeled in a Greco-Roman Light*

The third conclusion I draw regarding the Christian discourse on biblical levirate marriage is that the focus on the legal field also highlights the complex relation between the Christian theological discourse and the legal sources. While such a difference could indicate that this discourse actually rejects Roman law, this is not the case here. On the contrary: the Christian theological discourse on levirate marriage portrays the biblical tradition in the colors of Roman and Greek legal institutions. It utilizes these Roman institutions in the very same discourse, which is different from that of the Roman legislators and Christian legal writers, thus portraying a picture that sits comfortably within the Roman discourse when focusing on concepts and legal thinking yet is remote from it when focusing on specific rulings and prohibitions.

## CONCLUSION

In this article, I have sought to re-contextualize the Roman and Christian ban on levirate marriage, positioning this legal tradition as it was viewed by the Christians of the first centuries CE. I have demonstrated the transfer of a legal tradition from its biblical origin to a new Greek and Roman setting, which reshaped it and repositioned it within a larger legal context. However, revealing the Christian remodeling of this biblical inheritance also changes our understanding of the Roman and Christian prohibition on levirate marriage, revealing the differences between the legal discourse and the theological discourse and between the legal discourse and interreligious discourse.

The story of the rise of Christian legal traditions in late antiquity, following the New Testament, and their relation to the biblical inheritance, rabbinic surroundings, and Greco-Roman environment is yet to be told. In this case, the story is not one of a polemic with contemporaneous Jews who observed halakha, Jewish-Christian groups, or Christians preserving biblical law.<sup>118</sup> Rather,

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<sup>118</sup> Examples of such models are usually found regarding ritual. See, for example, Daniel Stökl Ben Ezra, *The Impact of Yom Kippur on Early Christianity: The Day of Atonement from Second Temple Judaism to the Fifth Century*,

it is the story of an inherited legal tradition<sup>119</sup> that was transferred to a new world. It was restructured according to contemporaneous Greek and Roman legal concepts and used in theological discourse, even though it did not fully correlate with other Christian legal discourse or with the new laws of the empire. As such, it is a significant fragment in chronicling the rise of a unique Christian legal tradition in a world of inherited biblical traditions and contemporaneous Greek and Roman legal concepts and rulings.

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Wissenschaftliche Untersuchungen zum Neuen Testament 163 (Tübingen: Mohr Siebeck, 2003), 261–89; and Peter J. Tomson, “Jewish Purity Laws as Viewed by the Church Fathers and by the Early Followers of Jesus,” in *Purity and Holiness: The Heritage of Leviticus*, ed. Marcel Poorthuis and Joshua Schwartz, Jewish and Christian Perspectives Series 2 (Leiden: Brill, 2000), 73–91, regarding purity laws.

119 For the continued use of the Hebrew Bible and appreciation of the biblical law, see the survey by Frakes, *Compiling the “Collatio Legum Mosaicarum et Romanarum,”* 136–40.