

CHAPTER 20

Sex in African and Israelite marriage system – Leviticus 18:16 in Context

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Introduction

Marriage in both African and Israelite cultures is a revered institution hence it is safeguarded by a host of laws and obligations which have to be observed for the survival of the societies. One law which cuts across both cultures finds expression in the biblical injunction: “**You shall not uncover the nakedness of your brother’s wife; she is your brother’s nakedness**” (Lev.18:16). While both societies adhere strictly to this law, one finds that there is a certain kind of conflict when it comes to the observance of this law in both cultures. In African society, Shona culture in Zimbabwean in particular, the tension usually comes out when one looks at the recognition of a practice called kupindira (poaching). Such recognition covers also death situations when a brother to the deceased person bears children for his brother with the deceased’s wife. In Israelite culture, we find the Sadducees alluding to the same practice when they argue that Moses wrote for them that if a man’s brother died, having a wife but no children, the man must take the wife and raise up children for his brother (Lk.20:28). It is the interest of this paper to explore this tension in both cultures adding more voice thus to the discussion on the hermeneutic of identification between African and biblical culture.

Since time immemorial, marriage is one of those social institutions that are upheld with high esteem in human societies. Though the rites and customs by which the union is achieved may vary from society to society, marriage in almost all societies is essentially a contract between spouses which often draws together the families of the spouses concerned to ratify as well as support the marriage contract. Since marriage is considered as the axis upon which the survival of the society depends, one finds that it is safeguarded by a host of laws that ensure that the institution does not fail for its failure would spell the extinction of the given society. The laws which safeguard this institution are two pronged. There are law instruments which have been put in place to reward virtue and some which are meant to punish offenders who transgress the given laws. While all these laws are observed with strict adherence, one finds that there is at times a certain kind of tension in some of these laws. A given case, which is of interest to this chapter is that of a law which forbids the uncovering of a brother’s nakedness. This chapter is interested in exploring the tension in this law viewing it from the context of African and Israelite marriage systems.

Sex in Israelite Marriage System - Lev.18:16

As with the Israelite version of this law, we find it well expressed in the Priestly formulation: “You shall not uncover the nakedness of your brother’s wife; she is your brother’s nakedness” (Lev.18:16). As evidently clear, this law falls within that section of the Priestly material which is called the Holiness Code. The Holiness Code is basically one of the various thematic units found in the book of Leviticus and has come to be termed so due to its special emphasis on holiness.

Taking a closer look at Leviticus 18, we find that the chapter as whole is devoted to issues that have to do with holiness in family and sexual relationships. It is, in other words, instructions on human sexuality in the context of the Israelite family. The underlying purpose which the Priestly writer wants to make clear to his readers is that these laws were not just arbitrary but have a divine sanction. This he shows by either starting off or closing the instructions with the divine self-identification formula: “I am the Lord your God” (Lev 18:2, 6, 21, 30). This self-identification is repeated at least six times in the whole chapter and it serves to show that these laws are imbued with the aura of divine holiness. It shows that Yahweh is the holy One, the One who sanctifies his chosen ones he redeemed from Egypt. What this self identification formula implied was that those who chose to disobey these laws were liable to a great punishment from God but those who kept them would find blessings.

The laws in this chapter were formulated against a special background or social context in which those things being prohibited were practiced freely. The first social context against which these laws are being promulgated is in reference to the land of Egypt where the Israelites were staying in bondage. God’s prohibition against the ways of the Egyptians not only covered their lifestyle but included also their laws. While the author is possibly aware of the close parallels between God’s laws and those of the secular and pagan societies around them, he wants to drive home to his readers that God’s laws surpass those of the secular world in terms of the high moral standards they uphold. The Israelites thus, in other words, were not only to shun the pagan lifestyle of the Egyptians but also their pagan legislation.

The other context against which these laws have been uttered is that of the Canaanites who were regarded as particularly licentious and promiscuous (Chingota, 2006:160) in such a way that they knew not of any boundaries when it came to sexual matters. As more studies, however, are being carried out on Canaanite religion and customs, it is becoming clearer that such a description of the licentiousness of the Canaanites was largely a result of the negative perception of Canaanite customs by Israelite prophets and writers. New archaeological findings at such places like Ugarit are illuminating valuable and interesting insights about Canaanite religion and customs (Boadt, 1984: 217).

Given the writer’s negative perception about Egyptian and Canaanite cultural practices, we find him urging the Israelites to obey God’s laws instead (Lev.18:4). The urge to obey God’s law is not just an empty or baseless exhortation but is rather premised on the fact that in doing so the Israelites

would enjoy life, which in other words, meant enjoyment of God's gifts of well-being, children, friends and prosperity. It is against such an understanding that one can appreciate the writer's call for the Israelites to observe the boundaries that govern the list of relationships in Leviticus 18:6-18.

Now taking a closer look at Leviticus 18:16; the law categorically states: **"You shall not uncover the nakedness of your brother's wife; she is your brother's nakedness."** This law is in the first place not conditional but rather apodictic in nature. It is a stern command given to the sons of Israel as they settle in Canaan. Though some would like to understand the term **ervah** 'nakedness' as carrying some same-sex overtones, especially when understood in the context of the story of Ham in Genesis 9:22 (Gunda, 2010:308), its use here shows that it is far from it. Given that the purpose of its immediate context (Lev.18:6-18) is to define and prohibit incestuous sexual relationships, one can see that the entire statement does not make sense unless it is understood to be a euphemism for sexual intercourse of a heterosexual nature. In line with this understanding, many new translations are now rendering the phrase "uncover the nakedness of..." as meaning to "have sexual relations with..." The reference to sexual relations is further affirmed by the use of the term 'uncover' which literally means removing someone's clothing.

Broadly understood thus, the above injunction can be taken as forbidding sexual intercourse with the wife of one's brother. The sole reason why such an incestuous relationship is being proscribed against is that it would be tantamount to having sexual intercourse with the flesh of one's brother. The wife's nakedness, in other words, was understood to be equivalent to the husband's nakedness since marital intercourse makes wife and husband into one flesh. Thus apart from being incestuous such a sexual relationship would translate also into being homosexual which the writer speaks so much against elsewhere in the book of Leviticus.

The injunction against sexual intercourse with the wife of one's brother needs to be understood in the broader context of the other laws in this chapter. When taken as a whole, one thing which stands out clear is that the undergirding motive behind them is the effort to preserve the institution of marriage. As rightly pointed out by Chingota (2006:159), marriage is regarded in scripture as "the cornerstone of all other social structures, and so its purity and integrity must be protected at all times." Being the cornerstone it meant that every care was supposed to be taken and the most authentic means of realizing this objective was to proscribe against sexual relationships between close relatives.

Be that as it may that there was a law which proscribed sexual encounter with the wife of one's brother, one finds a certain kind of tension in that the same society which promulgated and ensured that the law was observed in its strict sense condoned such a relationship in certain respects. In the Genesis narrative, for example, we find God punishing Onan for spilling the seed for he did not want to raise offspring for his brother Er who had died (Gen.38:6-10). What this passage helps

show is that it was a recognised custom among the Israelites that a man could ‘uncover the nakedness’ of his brother’s wife in certain respects despite the commonly accepted understanding that it was more of having sexual intercourse with the flesh of one’s brother. The sexual transgression of incest was waived in this case based on the understanding that one was considered as fulfilling the duty of preserving his brother’s line. This accounts even for the reason why the children who were born as a result of this encounter were not considered in the name of the brother who fathered them but rather in the name of the deceased brother, a development which Onan was not prepared to face (Gen.38:9). The Deuteronomistic writer appears actually more elaborate on this matter. In Deuteronomy 25: 5f, the law states: “When brothers live together and one of them dies without a son, the widow of the deceased shall not marry anyone outside the family; but her husband’s brother shall go to her and perform the duty of a brother-in-law by marrying her [...]” Failure to do so on the part of the husband’s brother would result in him being regarded so lowly in the society and publicly ashamed. The text speaks of him being ‘stripped of his sandal and spat on the face’ by the deceased’s wife. Such an act constituted both the placing of a stigma of shame on the man’s lineage as well as acted as a rite of passage whereby the woman freed herself from her obligations to him (Adeyemo, 2006:160), thus entering a new status as a free woman (Ruth 4:7f).

It is not surprising therefore when we meet the Sadducees in the New Testament alluding to this custom among the Israelites (Matt.22:23-33). Though they did not believe in the resurrection itself, the question they pose to Jesus about the rightful owner of the woman at the resurrection time shows that it was a common practice for a brother to ‘uncover the nakedness’ of the wife of his brother when death struck, thus disturbing the normal flow of a couple’s family life. Outside the realm of death, it remained illegal to engage in sexual contact with a brother’s wife when that brother was still alive. This is why John the Baptist had no kind words for Herod when he took Herodias, his brother Philip’s wife (Matt.14:2-12). Herodias had left her husband to marry Herod Antipas on the grounds that he was a tetrarch and eyeing the Hasmonean dynasty she probably thought if she managed to have children with him then they would share in the inheritance of the dynasty.

While the problem of sterility and impotence were matters recognised as facts of reality in the Hebrew Bible (Cf.1 Kings 1:1f), hardly do we find any allusion anywhere in the biblical text to the bringing in of a brother to the husband to beget children on his behalf. It appears such a practice would have been considered a violation of the marriage institution, hence illicit.

Sex in African Marriage system- The case of the Shona People of Zimbabwe

Making a cross-over to African culture, it is a recognised fact that most African laws have not found way to the pen of a scribe just as Israelite laws. They are rather engraved into the memories and hearts of the senior members of a given society. What it means then is that it is impossible to

directly quote them verbatim just as we do with Israelite laws. Since they are not to be found anywhere written it means that one has to interact with African elders who are more of moving encyclopaedias in terms of what they keep in their memory.

From the reservoir of their vast knowledge we are among many other things informed that it is actually a taboo to engage in sexual intercourse with the wife of one's brother. By taboo is meant any act that is considered prohibited on the grounds that it has the potentiality to bring about negative supernatural consequences on either an individual who breaks it or even the whole community. Generally one finds that African taboos share a lot in common with prohibitions which we find in the Biblical text and this speaks volumes on God's self-revelation to humanity since he created all in his own image. Just as Biblical prohibitions carry so much weight, so also with the taboos among the Africans. A violation of them spells anger from the gods or ancestors and may even open a door for the dark forces to enter and torment people. In nature, taboos, as observed by Chigidi, are restrictive and not directive in the sense that they only tell the individual what not to do and not what to do (Afriyie, 'Taboos' cited in Adeyemo, 2006; Chigidi, 2009).

Sex generally and anything that is associated with it, as pointed out by Nomalanga Mpofu, is one of the most tabooed subjects in Shona, both in the public and private domain (Mpofu, 2002:232-239). The reason why sex is the most tabooed area is that it is only through it that humanity continues to perpetuate itself. Weighing in, Laurent Magesa (1997:144) argues that sex is so fundamental to the preservation and transmission of the vital force and the ancestors too are assured of continual remembrance and honor. Coming back to sexual intercourse with the wife of one's brother, one would observe that it falls within what the Shona peoples would call *makunakuna* meaning an 'incestuous relationship.' Such a relationship carries with it a great punishment from the ancestors or from the gods for it angers them. Sharing similar sentiments, Masaka and Chemhuru (2011) argue that the violation of taboos can be seen as a direct provocation of ancestral spirits who are the custodians of the moral code. Once the ancestors or gods are offended it means they would have to be placated otherwise those individuals concerned and sometimes even the whole community where such an act would have taken place would face the consequences of it. As averred also by Magesa (1997:145), an incestuous relationship not only disturbs the well-being of a community in some very serious ways but it causes anger also to the ancestors whose remembrance through naming becomes disordered and confused resulting thus in such misfortunes like still-births not only in the family concerned but even also across the whole clan.

Makunakuna in the form of sexual intercourse with the wife of one's brother is a social ill not only in the sense that it brings down the anger of the gods or ancestors but it even may lead to real discord in the family. Such discord may manifest itself in the form of bloodshed among the brothers or even irrevocable separation among them. What makes this a very heinous crime is that it is often interpreted as tantamount to inheriting a brother's wife whilst he is still alive. Such a move is

further interpreted as openly wishing the death of that brother. In such cases surely no one would want to remain quiet and so not only would the brother stand up but the whole family also would join him to punish the offender. The consequences of such an act, as we saw, affect not only the culprits but may affect even the whole community hence the unified attack on the offender by the family members.

Just as in Israelite culture, the taboos surrounding marriage in African societies were put in place to safeguard the marriage institution. Marriage in the eyes of the Africans is considered the foundation of the society, hence even when African kings used to go for war, those who were recently married were supposed to remain behind. The sole purpose of remaining behind was not just to entertain the newly married wife but to provide a conducive environment which would result in procreation and by so doing add a certain fraction to the society's population. This ensured that as others died during the war, some were being born, thus ever revitalising the survival of that given society. In such societies failure to get married was not only held with such abhorrence but effort was made to ensure that almost everyone had a wife. Aunties or sisters to a boy were tasked with the duty to search and connect marriages even if their brother was physically or psychologically handicapped in one form or another. All was done on the understanding that a man could only be counted to be a man if he was married and had kids from such a marriage or even outside of it. This was meant not only to ensure the survival of the society at large but also the survival of that man's name in perpetuity.

Failure to beget children was thus considered not only as a great misfortune but a shameful occurrence which had to be avoided by all means. This finds echo in Tabona Shoko (2007:23) who avers that sterility was a cause for embarrassment to the man and his relatives. What was so dreadful about it for a man was the thought of being obliterated from the face of the earth forever without anyone to remember him. Magesa (1997:143) agrees with this position when he says that for Africans, "Infertility and sterility block the channel through which the stream of life flows; they plunge the person concerned into misery, they sever him from personal immortality, and threaten the perpetuation of lineage."

It is because of the importance of kids in one's life that Africans, more like the Israelites, tend to twist in certain respects the cherished law that no one should uncover the nakedness of a brother's wife. Such a twist to the law in the Shona culture of Zimbabwe may take the form of *kupindira* (poaching). *Kupindira*, as practiced in Zimbabwe, usually occurs when it becomes so clear to the wife that his husband is either sterile or impotent. Following the traditional marriage protocol, she usually approaches her aunt and reveals the secret of their bedroom life to her. On hearing the complaint, the first step the aunt will take would be to try and find ways of boosting the fertility of the man. As far back as Old Testament times, sterility and impotence have been equated with the destruction of the essence of masculinity hence since those early times people believe in the powers of magic as a cure to the said challenges. Included in the whole package of possible cures are powdered rhinoceros horn, menstrual blood and a variety of plants. While some may be quick to

dismiss these as mere magic and hence not scientifically proven cures, some have enjoyed their fruit. In Zimbabwean culture, the concoctions to boost fertility are usually prepared in the delicacy dish of *mazondo* (cattle hoofs).

After all has been tried, however, but to no avail, the aunt, after consultation with other members of the family, may secretly arrange with the brother to the husband to enter privately the matrimonial home of his brother and engage in sexual intercourse with his wife so as for her to conceive. In the whole process what is key is to ensure that the husband does not come to know of this arrangement hence all those involved in it take some kind of oath never to divulge such information to any outsider and effort is made to ensure that the husband will never come to suspect of foul play in his matrimonial home. Affirming the need to handle the issue with care Holleman and Frederick, (1969:18) submits: “Owing to the extreme delicacy of the situation the matter is always conducted with utmost discretion and secrecy [...] that even the husband’s own father may be left ignorant of the arrangements.” I beg to differ, however, with Holleman and Frederick when they argue that the arrangement to raise children on behalf of the impotent or sterile brother is something that is based on the mutual agreement between the husband and wife. Such a view appears not to be in tandem with Shona culture, for example, which gives prominence to the role of *vatete* – aunt in resolving such issues. Instead of the husband being said to know, it is actually the fear of repercussions if he were to know that accounts for the issue being handled so carefully. If not properly handled it can indeed be so disastrous to the whole family and may even lead to the death of the young brother who would have poached into the matrimonial home of the elder brother. When carefully handled, the impotent or sterile man may actually rejoice when he sees his wife become pregnant and may even boast of having finally scored the decisive goal which measures his masculinity. While some may come to smell a dead rat much later, some actually die without ever knowing that the kids they were sweating it out to raise and educate were not actually theirs biologically.

As for the young brother who is the star player to ensure the success of this arrangement, there is never to be a time when he can rise up one day to claim custody of those kids he would have fathered. Since he fathered the kids in his brother’s name it means that the children legally belong to the elder brother. Such a scenario falls within the realm of what is covered by the Shona idiom: *Gomba harina mwana*, literally meaning to say that ‘an intruder has no rights to a child.’ What it means, in other words, is that since the elder brother is the one who would have paid the bride price for his wife then all what she has is said to automatically belong to him. If the young brother were to claim custody of the kids then it would cease to be a recognised or legal practice of fathering children in a brother’s name and it would turn now to be classified under the serious crime of incest. The young brother, in other words, would stand accused of having violated the bonds of consanguinity and this usually attracts heavy punishment on the part of the intruder.

Another way in which the rule proscribing against uncovering the nakedness of a brother’s wife, appear to be circumvented is when a man through inheritance takes over the wife of his brother.

Just as in Israelite culture, it is a recognised practice among the Africans that if a man dies and leaves behind a young wife, a brother to that deceased man can be tasked to raise up children for his brother which is termed in Shona culture *kupfutidza imba yamukoma* which can literally be taken as meaning 'kindling fire in the homestead of a brother.' The sexual euphemism 'kindling fire' is derived from the notion that when death strikes, the burning passion of love which normally culminates in sexual intercourse between husband and wife dies too and the cold which sets in, representing the absence of love, may cause untold suffering to the woman hence, for her sake, there would be need to help her out of the situation by kindling that love in her heart once more. The deceased's wife can actually make that request to the living male members of his husband's family and this is normally done when she feels that her children are still young and hence may need the protection and support of a male relative. In some cases it can be one of the living brothers who takes the initiative to 'kindle fire' for his brother. Children born out of this union belong to the family of the deceased man. They are his on the basis that the lobola payments were made by him and so it means he has the right to claim custody over what the wife he married has. Confirming the issue of the rights of a man over a woman through the payment of lobola, Tyanai Charamba (2011:133-4) argues that once lobola has been paid for her, she automatically has a single *de jure* husband and many *de facto* ones. While she may have many *de facto* husbands, tradition would bind her to enjoy conjugal rights only with her *de jure* husband and not with her *de facto* husbands who comprise her husband's younger brothers and his sister's sons.

Since women during the inheritance ceremony usually reserve the right to choose among the expectant living male members the one to inherit them, some may actually refuse to pick from the line-up and choose rather to be inherited by one of their own sons if they are grown-ups. A brief look at the whole process would probably shed more light on this. After the death of a husband, usually his estate is divided among the living family members. On the list of the estate would be his wife and children. In Shona culture, before she can be inherited, however, she has to prove that she did not violate her commitment to her husband through a process called *kudarika tsvimbo* 'crossing her husband's war paraphernalia.' If she passes then she is made to choose a husband from a line-up of males from the husband's family who would continue his brother's duties. She is usually given a dish which she is expected to pass on to the new husband she would have chosen. Since she has the freedom to choose, she may by-pass the expectant males and give it rather to her eldest son. In such a scenario it means she would have chosen not to be uncovered of her nakedness and usually her decision is respected. Most women in African societies are now moving towards this direction and an external push factor these days is the fear of contracting HIV/AIDS from such multiple unions. Not all societies, however, are prepared for this as they expect the widow to marry one of her late husband's brothers. If the woman fails to comply, as noted by Maureen Kambarami (2006:para.7.2), she risks being sent back to her parents, thus leaving behind her children and all that she toiled for. It may happen also that those whose decisions are tolerated when they choose to be inherited by one of their own sons may later find themselves swerving towards the traditional expectations. A report, for example, by Safaids (2009:18) shows that one of the widows who

publicly objected to being inherited by any of her late husband's brothers later gave in. For more than a year she continued to receive emotional and material support from one of the brothers that at the end, despite her public posture, decided to repay the support she had been getting by being intimate with the brother-in-law in question. Such a case was not isolated for there were many other similar cases.

Concluding Reflection

To sum up this discussion, marriage is considered one of the key areas of social life in African and Israelite culture. It is the axis upon which the survival of the society depends. Due to its paramount importance, it is safeguarded by a host of laws which ensure that the institution does not fail for its failure would spell the extinction of a given society. Among the host of laws governing this institution, this chapter is interested in the law which speak against the uncovering of a brother's wife. Using a hermeneutic of identification, we observe that while both cultures adhere strictly to this rule, there are certain cases in which this rule can be waived. In most cases, in both cultures, the rule is waived when people are confronted with the reality of death. From the discussion it has come out clear that it is a recognised practice in both cultures that a brother to the deceased man can be tasked to raise seed for his brother so that the brother's name would not just die to oblivion. The African marriage system goes a step further to waive the law also when people are faced with the worrying phenomenon of either sterility or impotence. In such cases a private arrangement to raise seed for the impotent or sterile man is initiated usually through the help of *vatete* to the childless couple.

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