

Levirate Marriage in Deuteronomy 25:5-10 and Its Precursors in Leviticus and Numbers: A Test Case for the Relationship between P/H and D

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Abstract: In this article, I argue that Deut 25:5-10 has precursors in Leviticus and Numbers. The subject of levirate marriage picks up the topic of daughters' right to an inheritance (Num 27:1-11) and the related problem that when a daughter marries, the inheritance of her father might transfer to another family (Num 36:6-12). Furthermore, within the Decalogue orientation of the Deuteronomic law, Deut 25:5-10 is related to Deut 5:21a and picks up the prohibition of Lev 20:21. While it is generally forbidden to take the wife of a brother because this would dishonor him, in the special case of Deut 25:5 it is even commanded to marry the wife of the brother to preserve his name.

Key Words: levirate marriage • inheritance • Leviticus 20:21 • Numbers 27:1-11 • Numbers 36:6-12 • Deuteronomy 25:5-10

IN THIS ARTICLE, I work with two presuppositions that are not generally acknowledged among biblical scholars. First, the Holiness Code and laws of the Book of Numbers are presupposed in Deuteronomic law.¹ Even if one is not

This article is produced in connection with my status as Research Associate in the Department of Ancient Languages of the University of Pretoria, South Africa. A preliminary version of this paper was presented at the SBL International Meeting in Vienna (July 2014) in the Pentateuch/Torah session. I am grateful for all the comments that helped me to improve the paper, and I want to thank especially Prof. Phil Botha (Pretoria) for proofreading it. The English translations of biblical texts follow the English Standard Version (ESV).

¹ See, e.g., Sara Japhet, "The Relationship between the Legal Corpora in the Pentateuch in Light of Manumission Laws," in *Studies in Bible, 1986* (ed. Sara Japhet; ScrHier 31; Jerusalem: Magnes, 1986) 63-90; Benjamin Kilchör, "Frei aber arm? Soziale Sicherheit als Schlüssel zu den

convinced by this direction on a diachronic level, it is still the natural reading direction of the synchronic Pentateuch. Therefore, those who view Deuteronomic law as earlier can still follow the line of thought of this article on a synchronic level. Second, I work with the thesis of the Decalogue orientation of Deuteronomic law.² I argue that the relationship between levirate marriage and the respective laws in Numbers and Leviticus is best explained under these two presuppositions. What is presented here is part of a larger picture established in my dissertation.³

Before turning to the topic of levirate marriage, two examples of this larger picture are briefly offered. First, according to some of those who reject the Decalogue orientation of Deuteronomic law,⁴ the relationship between the Sabbath commandment and the festival legislation does not exist in Deuteronomy and is the later product of the Holiness legislation (Leviticus 23). Yet, in light of the evidence of the verbal coincidences between Deut 5:12-15 and Deut 16:1-17, it is

Sklavenfreilassungsgesetzen im Pentateuch,” *VT* 62 (2012) 381-97; idem, “The Direction of Dependence between the Laws of the Pentateuch: The Priority of a Literary Approach,” *ETL* 89 (2013) 1-14; Jacob Milgrom, *Leviticus 17–22: A New Translation with Introduction and Commentary* (AB 3A; New York: Doubleday, 2000) 1357-61.

² See, e.g., Georg Braulik, *Die deuteronomischen Gesetze und der Dekalog: Studien zum Aufbau von Deuteronomium 12–26* (SBS 145; Stuttgart: Katholisches Bibelwerk, 1991); idem, “Der unterbrochene Dekalog: Zu Deuteronomium 5,12 und 16 und ihrer Bedeutung für den deuteronomischen Gesetzeskodex,” *ZAW* 120 (2008) 169-83, esp. 174-76 n. 20; Karin Finsterbusch, “Die Dekalog-Ausrichtung des deuteronomischen Gesetzes: Ein neuer Ansatz,” in *Deuteronomium: Tora für eine neue Generation* (ed. Georg Fischer, Dominik Markl, and Simone Paganini; Beihefte zur Zeitschrift für altorientalische und biblische Rechtsgeschichte 17; Wiesbaden: Harrassowitz, 2011) 123-46; Frank-Lothar Hossfeld, “Der Dekalog als Grundgesetz: Eine Problemanzeige,” in *Liebe und Gebot: Studien zum Deuteronomium* (ed. Reinhard G. Kratz and Hermann Spieckermann, FRLANT 190; Göttingen: Vandenhoeck & Ruprecht, 2000) 46-59, esp. 54-59; Stephen A. Kaufman, “The Structure of the Deuteronomic Law,” *Maarav* 1/2 (1978–79) 105-58; Jack R. Lundbom, *Deuteronomy: A Commentary* (Grand Rapids: Eerdmans, 2013) 77-86; Dennis T. Olson, *Deuteronomy and the Death of Moses: A Theological Reading* (OBT; Minneapolis: Fortress, 1994) 62-65; Eckart Otto, “Der Dekalog in den deuteronomistischen Redaktionen des Deuteronomiums,” in *Die Zehn Worte: Der Dekalog als Testfall der Pentateuchkritik* (ed. Christian Frevel, Michael Konkel, and Johannes Schnocks; QD 212; Freiburg i. Br.: Herder, 2005) 95-108, esp. 96-101; idem, *Deuteronomium 4,44–11,32* (HTKAT; Freiburg i. Br.: Herder, 2012) 689-704; Alexander Rofé, “The Arrangement of the Laws in Deuteronomy,” *ETL* 64 (1988) 265-87; Udo Rüterswörden, “Die Dekalogstruktur des Deuteronomiums: Fragen an eine Annahme,” in *Der Zehn Worte* (ed. Frevel et al.), 109-21; John H. Walton, “The Decalogue Structure of the Deuteronomic Law,” in *Interpreting Deuteronomy: Issues and Approaches* (ed. David G. Firth and Philip S. Johnston; Downers Grove, IL: IVP Academic, 2012) 93-117.

³ Benjamin Kilchör, “Mosetora und Jahwetora: Das Verhältnis von Deuteronomium 12–26 zu Exodus, Levitikus und Numeri” (Ph.D. diss., Evangelische Theologische Fakultät, Leuven, 2014). Levirate marriage is treated on pp. 260-62, but not as broadly as here.

⁴ E.g., Rüterswörden, “Die Dekalogstruktur,” 116-17; Nathan McDonald, review of *Interpreting Deuteronomy: Issues and Approaches* (ed. David G. Firth and Philip S. Johnston; Downers Grove, IL: IVP Academic, 2012), *RBL* 11 (2013), http://www.bookreviews.org/pdf/9121_10056.pdf.

hard to believe that there would not exist any relationship between the Sabbath commandment and the festival legislation in Deuteronomy:

Deut 5:12-15	Deut 16:1-17
12 שמור את יום השבת לקדשו כאשר צורך יהיה אלהיך:	1 שמור את חדש האביב ועשית פסח ליהוה אלהיך . . .
13 ששת ימים תעבד ועשית כל מלאכתך:	8 ששת ימים תאכל מצות וביום השביעי עצרת ליהוה אלהיך
14 ויום השביעי שבת ליהוה אלהיך לא תעשה כל מלאכה	לא תעשה מלאכה
אתה ובנך ובתך ועבדך ואמתך ושורך וחמרך וכל בהמתך וגרך אשר בשעריך למען ינוח עבדך ואמתך כמוך:	11 ושמחת לפני יהוה אלהיך אתה ובנך ובתך ועבדך ואמתך והלוי אשר בשעריך והגר והיתום והאלמנה אשר בקרבך במקום אשר ובחר יהוה אלהיך לשכן שמו שם:
15 וזכרת כי עבד היית בארץ מצרים ויצאך יהוה אלהיך משם ביד חזקה ובזרע נטויה על כן צורך יהוה אלהיך לעשות את יום השבת:	12 וזכרת כי עבד היית במצרים ושמרת ועשית את החקים האלה:

Second, in the law of the refuge cities, Deut 19:3b-4a verbally combines Exod 21:12-13 and Num 35:15:

Deut 19:3b-4a	Num 35:15; Exod 21:12-13
והיה לנוס שמה כל רצח	לנוס שמה כל מכה נפש בשגגה
וזה דבר הרצח אשר ינוס שמה וחי	מכה . . . אשר ינוס שמה
And it shall be to flee there for each murderer to flee there for each manslayer of a soul without intention.
And this is the case with the murderer who flees there to live.	A manslayer . . . who flees there.

Yet, while the laws in both Exodus and Numbers call the delinquent a “manslayer” (מכה), Deuteronomy changes the term in both cases from “manslayer” to “murderer” (רצח) and thus uses the term of the Decalogue “you shall not murder” (לא תרצח). It seems not only that the Decalogue orientation of the Deuteronomic law is the best explanation for this change but also that the combination of Num 35:15 and Exod 21:12-13 in Deut 19:3b-4a is a strong argument that here Num 35:15 is presupposed in Deuteronomy 19 and not vice versa.

I. Deuteronomy 25:5-10; Numbers 27:1-11; and Numbers 36:6-12

The case in Deut 25:5 is that there are brothers and one of them dies without having a son (בן אין לו). This identical formulation is found in the OT in only one other place: Num 27:8.⁵ Like Deut 25:5, Num 27:8 deals with the case of a man dying and having no son. The daughters of this man, whose name is Zelophehad, come to Moses and say, “Why should the name of our father be taken away from his clan because he had no son? Give to us a possession among our father’s brothers” (Num 27:4). The issue here is the “name” of the father, which is closely related to the inheritance. The solution of Moses is as follows: “If a man dies and has no son, then you shall transfer his inheritance to his daughter” (Num 27:8). But if there is no daughter either, then the inheritance goes, according to v. 9, to the brothers of the dead man. The following synopsis shows the relationship between Num 27:1-11 and Deut 25:5-10:

Deut 25:5-6	Num 27:1-11
<p>5 כִּי יִשְׁבוּ אַחִים יַחְדוּ וּמֵת אֶחָד מֵהֶם וּבֶן אֵין לוֹ לֹא תִהְיֶה אִשֶׁת הַמֵּת הַחֹזֶצֶה לְאִישׁ זָר יִבְמָה יָבֵא עֲלֶיהָ וּלְקַחְהָ לּוֹ לְאִשָּׁה וַיִּבְמָה 6 וְהָיָה הַבְּכוֹר אֲשֶׁר תֵּלַד יִקְוֶם עַל שֵׁם אַחִיו מֵמֵת וְלֹא יִמְחָה שְׁמוֹ מִיִּשְׂרָאֵל</p>	<p>4 לָמָּה יִגְרַע שֵׁם אֲבִינוּ מִתּוֹךְ מִשְׁפַּחְתּוֹ כִּי אֵין לוֹ וּבֶן תִּנְהַל לָנוּ אַחֲזָה בְּתוֹךְ אַחֵי אֲבִינוּ 8 . . . אִישׁ כִּי יָמוּת וּבֶן אֵין לוֹ וְהִעֲבַרְתֶּם אֶת נַחֲלָתוֹ לְבָתּוֹ: 9 וְאִם אֵין לוֹ בֵּת וּנְתַתֶּם אֶת נַחֲלָתוֹ לְאַחָיו:</p>
<p>5 If <u>brothers</u> dwell together and one of them <u>dies and has no son</u>, the wife of the dead man shall not be married outside to a strange man. Her husband’s brother shall go in to her and take her as his wife and perform the duty of a husband’s brother to her. 6 And the first son whom she bears shall succeed to the <u>name of his dead brother</u>, that his <u>name</u> may not be blotted out of Israel.</p>	<p>4 Why should the <u>name of our father</u> be taken away from his clan because he <u>had no son</u>? Give to us a possession among our father’s <u>brothers</u>. 8 . . . If a man <u>dies and has no son</u>, then you shall transfer his inheritance to his daughter. 9 And if he has no daughter, then you shall give his inheritance to his <u>brothers</u>.</p>

Since it is the goal of this law to preserve the name of the father, however, there is a problem with the hereditary right of his daughters: if a daughter marries, the inheritance goes to another clan and thus the property of the father no longer stays in the same family. This problem is addressed in Num 36:6-12, where Moses adjusts the law to the effect that “every daughter who possesses an inheritance in

⁵ Similar in wording are Num 27:4; Judg 11:34; Jer 49:1; Qoh 4:8.

any tribe of the people of Israel shall be wife to one of the clan of the tribe of her father, so that every one of the people of Israel may possess the inheritance of his fathers” (v. 8).

Thus, the solution in Numbers when a man dies and has no son is that the inheritance goes either to his daughters, in which case the daughters are allowed to marry only within the clan of the father, or to the brothers of the dead man. This is the point where Deut 25:5-6 enters with the commandment of levirate marriage. The motivation clause in Deut 25:6 is quite similar to the one in Num 36:8. In Num 36:8 it is stated “that every one of the people of Israel may possess the inheritance of his fathers,” in Deut 25:6 “that his name may not be blotted out of Israel.”

The most straightforward way to understand levirate marriage is to read it as an improvement on the hereditary right in Numbers. The closest person to the dead man who has no son is neither his daughter nor his brother but his wife. Now, if the dead man’s brother takes her as his wife and the firstborn son will succeed to the name of the dead man, then the continuity of this name is ensured and the daughters are free to marry anybody.

Jan Christian Gertz has argued that Deut 25:5-10 is probably older than Num 27:1-11 because the hereditary right of daughters is not provided for in Deut 25:5-10, while the hereditary right of the daughters has the goal of preserving the name of the father, as in Deut. 25:5-10.⁶ Yet this is not very convincing for several reasons. First, the argument of Gertz is of course reversible: Num 27:1-11 could be older than Deut 25:5-10 since levirate marriage is not provided for in Num 27:1-11, while levirate marriage has the goal of preserving the name of the father, as in Num 27:1-11. Second, in a synchronic reading of the Pentateuch the hereditary right of daughters is presupposed when the reader comes to levirate marriage, but not vice versa. If the hereditary right of daughters had been created to subvert levirate marriage, this aim would be annihilated by the pure fact that the hereditary right of daughters is editorially placed before levirate marriage and that, despite Num 27:1-11, Deut 25:5-10 keeps the last word on that issue within the Pentateuch. Thus, the aim of Num 27:1-11 would have failed. Third, the daughters of Zelophehad request, “Why should the name of our father be taken away from his clan because he had no son? Give to us a possession among our father’s brothers” (Num 27:4). The father’s brothers are explicitly mentioned. If levirate marriage had been known at that point, the argument of Zelophehad’s daughters would make no sense, because it would be the duty of one of their uncles to preserve the name of their father. This contradiction, however, does not exist if the hereditary right of daughters is presumed to be older than levirate marriage. Deuteronomy 25:5 brings the wife of the dead man, who is completely omitted in Numbers 27, into the

⁶Jan Christian Gertz, *Die Gerichtsorganisation Israels im deuteronomischen Gesetz* (FRLANT 165; Göttingen: Vandenhoeck & Ruprecht, 1994) 197-98.

picture. In this way, the laws can be understood as complementary. The new levirate marriage is now the preferred way to preserve the father's name by giving birth to a "surrogate son," while the hereditary right in Numbers 27 is still a valid alternative if there is no son.

At this point, two basic objections have to be answered. First, could it be that levirate marriage was so common in the ancient Near East that it has to be presupposed in Numbers 27 anyway? And, second, since the wife of the dead man is not mentioned in Numbers 27 at all, could it be that Numbers 27 presupposes that the wife is already dead or at least not able to bear another son due to her advanced age?

As to the first question,⁷ there is no mention of anything like biblical levirate marriage in Babylonian law. In Assyrian law, the following parallel exists in §33 of the Middle Assyrian Laws:⁸

[If] a woman is residing in her own father's house, her husband is dead, and she has sons [...], [she shall dwell in] a house belonging to th[em]. [If] she has no [son, her father-in-law shall give her to whichever of his sons] he likes [.....] [.....] [.....] or [if he so pleases], he shall give her as spouse to her father-in-law. If her husband and her father-in-law are (both) dead, and she has no son, she is indeed a widow; she shall go wherever she pleases.

Although this law has some similarities to Deut 25:5-10, the laws are dealing with different questions. While it is the aim of levirate marriage in Deut 25:5-10 to carry on the name of the dead man of the wife, MAL §33 deals with the question of where the wife can live after the death of her husband. In other words, there is no hint that, if the wife then gives birth to a son, this son will succeed to the name of her former husband.⁹ As Jack R. Lundbom notes concerning the aim of biblical levirate marriage,¹⁰ "both the Babylonians and the Assyrians attained the same end by legitimating children of slave-wives and concubines, and by adoption; therefore they had no need of a levirate marriage."¹¹

⁷ For an overview of the discussion about levirate marriage in the ancient Near East, see Donald A. Leggett, *The Levirate and Goel Institutions in the Old Testament: With Special Attention to the Book of Ruth* (Cherry Hill, NJ: Mack, 1974) 9-27.

⁸ The translation is taken over from *Treaty, Law and Covenant in the Ancient Near East*, part 1, *The Texts* (ed. Kenneth A. Kitchen and Paul J. N. Lawrence; Wiesbaden: Harrassowitz, 2013) 667.

⁹ See Emanuel Ring, *Israels Rechtsleben im Lichte der neuentdeckten assyrischen und hebräischen Gesetzesurkunden* (Stockholm: Victor Petterson, 1926) 49: "Der Unterschied aber ist, dass in CA [Assyrian Laws] die Rücksicht auf den Toten und die berechtigte Forderung darauf, dass sein Name nicht aussterben möge, gar keinen Platz findet."

¹⁰ He follows G. R. Driver and John C. Miles, *The Assyrian Laws* (Oxford: Clarendon, 1935) 240-50.

¹¹ Lundbom, *Deuteronomy*, 706.

A closer parallel can be found in the Hittite Laws of the first half of the second millennium B.C.E. (§193):¹²

If a man has a wife, and the man dies, his brother shall take his widow as a wife. (If the brother dies) his father shall take her. When afterwards his father dies, his [i.e., the father's] brother shall take the woman whom he had.

But, as with MAL §33, this law is not interested in the continuation of the man's name at all. It does not even care whether the wife is childless. Rather, the law stands in a sequence of laws (§§187-200a) dealing with the question of which kinds of sexual actions (especially within a family) are allowed, respectively "not an offense" (Hittite *U-UL ḫa-ra-tar*). Most scholars therefore "draw a clear distinction between the practice of the levirate among the Hittites and in Israel."¹³

Furthermore, text no. 16144 from the royal palace of Ugarit is quoted often in the context of levirate marriage.¹⁴

To be effective immediately! Thus says Arihalbu, King of Ugarit:
Whoever, after my death, takes (in marriage) my wife, Kubaba, daughter of Takan (?) from my brother—
May Baal crush him,
May he not make great (his) throne,
May he not dwell in a (royal) house,
May Baal of Mt. Casius crush him!

Several scholars have argued that Arihalbu obviously had no son who could succeed him and that he determined that his wife would become the wife of his brother after his death. According to A. van Selms, "we have here something we could compare with the idea underlying the Levirate marriage: once married into her husband's family, the wife is regarded as belonging to that family, and on her husband's death she remains in the care of her father-in-law. Perhaps he detained her till the moment a younger son could marry her."¹⁵ This conclusion, however, can be made only with reservation. Not only is it "based more on inference than on direct statement,"¹⁶ but also it is not possible to draw information from this royal text on a general practice or even duty, as John Gray has pointed out:

On this evidence alone it is not possible to argue for the regular practice of levirate marriage as in Hebrew society. The fact that marriage of a widow with any but her brother-in-law is here expressly forbidden by special deed suggests that even if levirate marriage was regular in Ugaritic society it was certainly not compulsory. Indeed,

¹² The translation is taken from Kitchen and Lawrence, *Treaty, Law and Covenant*, 289.

¹³ Leggett, *Levirate and Goel Institutions*, 24.

¹⁴ The translation is taken from *ibid.*, 25.

¹⁵ A. van Selms, *Marriage and Family Life in Ugaritic Literature* (Pretoria Oriental Series 1; London: Luzac, 1954) 35-36.

¹⁶ Leggett, *Levirate and Goel Institutions*, 26.

since this is a royal disposition where the marriage of the king's widow might have possible political consequences, to say nothing of the infringement of the "divinity that doth hedge a king," it may well be that levirate marriage in Ugarit was exceptional.¹⁷

To sum up, although levirate marriage in the general sense (a woman marries her brother-in-law [Lat. *levir*]) is mentioned in several ancient Near Eastern sources, one cannot assume that it is presupposed in Num 27:1-11. The textual evidence does not support the suggestion that levirate marriage was a common practice in the ancient Near East, nor does it suggest that levirate marriage was related to the succession of the deceased's name. Thus, it is not very likely that levirate marriage is simply presupposed in Num 27:1-11 as such a common practice that it would not even be necessary to mention it.

The second possible objection is that it might be presupposed in Num 27:1-11 that there is no wife left who could give birth to another son. Numbers 27:1-11 and Deut 25:5-10 are in agreement that usually, if a man dies, his name and his inheritance pass to his son. Both laws deal with the question, What if there is no son? The crucial point is that Num 27:8-11 provides an order of eventualities: *if* there is no son, the inheritance goes to the daughter; *if* there is no daughter, it goes to the father's brothers; *if* there are no brothers, it goes to the nearest kinsman. Of course, in this order there would also be room for the eventuality that there is a wife who is able to give birth to a "surrogate son," but such a case seems simply not to be provided for. Again, it has to be emphasized that in the other direction this problem can be solved easily. If Deut 25:5-10 presupposes the "inheritance order" of Num 27:1-11, then levirate marriage can be seen as a "second try" to preserve the father's name on the first level, the level of the son: if there is no son, then the Israelites first have the duty to try to get a son who can inherit the name of the father.¹⁸ If Num 27:1-11 is presupposed in Deut 25:5-10, this means that when the levirate marriage fails for any reason, the daughter will be the next possible successor of his name (but is then, according to Num 36:6-12, allowed to marry only within the father's clan).

II. Deuteronomy 25:5-10 and Leviticus 20:21

Another text that might be presupposed in Deut 25:5-10 is Lev 20:21. In the Decalogue structure of the Deuteronomic law, levirate marriage is connected to

¹⁷ John Gray, *The Legacy of Canaan: The Ras Shamra Texts and Their Relevance to the Old Testament* (2nd rev. ed.; VTSup 5; Leiden: Brill, 1965) 251.

¹⁸ Note that levirate marriage is requested only when two brothers have been living together (כי יֵשְׁבוּ אִחִים יַחְדָּו) "as joint heirs on the family estate. The father is dead . . . , yet the estate remains undivided" (Lundbom, *Deuteronomy*, 706).

the commandment “You shall not covet your neighbor’s wife” (Deut 5:21a).¹⁹ The topic of levirate marriage is even more serious: at issue is taking not only the wife of the neighbor but even the wife of the brother. This is clearly forbidden in Lev 18:16 and 20:21. Leviticus 20:21 is literally closer to Deut 25:5 in forbidding taking the wife of the brother (לִכַּח אֶת אִשְׁתּוֹ), while Deut 25:5 commands in a certain case to take the wife of the brother *as wife* (לִכַּח לְאִשָּׁה). The phrase לִכַּח אֶת אִשְׁתּוֹ does not designate marriage as such but sexual intercourse (cf. Lev 20:14). On the other hand, לִכַּח לְאִשָּׁה means marriage. Thus, sexual intercourse with the wife of the brother is, according to Lev 20:21, not allowed. Deuteronomy 25:5 takes up this prohibition and asks, Is it really in all circumstances forbidden to “take” the wife of the brother? The answer is no: in one certain case it is not only not forbidden but even required! This is the case when the brother dies and his wife has no son. Then one shall not only “take” the wife (for sexual intercourse), but take her as wife (marry her).

The parallel thought goes even further: Lev 20:21b accuses the man who takes the wife of his brother of defiling the honor of his brother and curses them: they shall be childless! Deuteronomy 25:6, on the other hand, turns the matter of the special case of v. 5 upside down. By taking the wife of his dead, childless brother, he does not *defile* but rather *preserves* the name and the honor of his brother, namely, when he begets children and designates the firstborn son as heir of the dead brother. In short, the dead brother shall have children! Thus, we have here the exception to the rule. The rule is that sexual intercourse with the wife of the brother does defile the name of the brother and brings a curse of childlessness. The exception is, however, that sexual intercourse with the wife is required to preserve the name of the brother, and the goal is to have at least one son.

The relationship between Lev 20:21 and Deut 25:5-10 has been discussed already by Alfred Cholewiński.²⁰ Yet his treatment was quite circular. First he asked whether in Lev 20:21 levirate marriage is abolished and, after answering this in the affirmative, concluded that it is unlikely that Lev 20:21 did not know Deut 25:5-10. An easier solution would be to reverse the direction of dependence: Deut 25:5-10 is then the exception to the rule in Lev 20:21.

Of course, since the verbal coincidences between Lev 20:21 and Deut 25:5 are very vague, one could doubt whether there is a relationship between the two texts at all. But there are at least four reasons why there might be a relationship nonetheless.

¹⁹ See Braulik, *Die deuteronomischen Gesetze*, 108-10. For an extensive discussion, see Michael D. Matlock, “Obeying the First Part of the Tenth Commandment: Applications from the Levirate Marriage Law,” *JSOT* 31 (2007) 295-310.

²⁰ Alfred Cholewiński, *Heiligkeitsgesetz und Deuteronomium: Eine vergleichende Studie* (AnBib 66; Rome: Biblical Institute Press, 1976) 298-99.

First, as already mentioned, in the Decalogue structure of the Deuteronomic law, Deut 25:5-10 is related to Deut 5:21a. Given this relationship, it is not a very great distance to the question whether a levirate marriage is not a transgression of other laws concerning sexuality.

Second, the fact that the question of the legitimacy of levirate marriage might arise with regard to prohibitions of sexual relationships within a family can be seen in the above quoted §193 of the Hittite laws, where levirate marriage is treated precisely with the question whether certain sexual relationships would be an offense.

Third, given the fact that there are several clear literary relationships between the Holiness Code and the Deuteronomic law,²¹ it is unlikely from the outset that the later law does not at least know the earlier law in this case too. This is strengthened by the fact that many scholars do not suggest a too complex redaction for the Holiness Code.²² This makes it rather unlikely that some laws of the Holiness Code and the Deuteronomic law are related to each other while others are independent traditions.

Fourth, I would suggest that it is not an isolated contact between Lev 20:21 and Deut 25:5 but rather that Deuteronomy 22–25 is conceptually linked with Leviticus 18/20 at several points:

Lev 20:10	→	Deut 22:22, 28
Lev 18:8; 20:11	→	Deut 23:1
Lev 18:8-19; 20:11-21	→	Deut 23:15
Lev 18:22-30; 20:13	→	Deut 23:19
Lev 20:20	→	Deut 24:16
Lev 18:16; 20:21	→	Deut 25:5

As can be seen, Leviticus 20 and the Deuteronomic law follow largely the same order. The relationship between Lev 20:10 and Deut 22:22, 28 is quite obvious and

²¹ See, e.g., Georg Braulik, “Die dekalogische Redaktion der deuteronomischen Gesetze: Ihre Abhängigkeit von Levitikus 19 am Beispiel von Deuteronomium 22,1-12; 24,10-22 und 25,13-16,” in *Bundesdokument und Gesetz: Studien zum Deuteronomium* (ed. Georg Braulik; Herders biblische Studien 4; Freiburg i. Br.: Herder, 1995) 1-25; idem, “Weitere Beobachtungen zur Beziehung zwischen dem Heiligkeitgesetz und Deuteronomium 19-25,” in *Das Deuteronomium und seine Querbeziehungen* (ed. Timo Veijola; Schriften der Finnischen Exegetischen Gesellschaft 62; Helsinki: Finnische Exegetische Gesellschaft; Göttingen: Vandenhoeck & Ruprecht, 1996) 23-55; Cholewiński, *Heiligkeitgesetz*; Kilchör, “Direction of Dependence”; Christophe Nihan, *From Priestly Torah to Pentateuch: A Study in the Composition of the Book of Leviticus* (FAT 2/25; Tübingen: Mohr Siebeck, 2007) 401-545; Eckart Otto, “Innerbiblische Exegese im Heiligkeitgesetz Levitikus 17-26,” in *Levitikus als Buch* (ed. Heinz-Josef Fabry and Hans-Winfried Jüngling; BBB 119; Berlin: Philo, 1999) 125-96; Jeffrey Stackert, *Rewriting the Torah: Literary Revision in Deuteronomy and the Holiness Legislation* (FAT 52; Tübingen: Mohr Siebeck, 2007).

²² For Leviticus 18–20, see, e.g., Nihan, *From Priestly Torah*, 430-81.

can also be seen in the wording. The same is true for the relationship between Lev 20:11 and Deut 23:1. The link between Deut 23:15 and Leviticus 18/20 is the word ערוה (something indecent), which is used in Deuteronomy only in 23:15 and 24:1, in Leviticus only in 18:6-19 and 20:11-21 (thirty-two times!). In the rest of the Pentateuch, the word is used only in Gen 9:22-23; 42:9, 12; Exod 20:26; and Exod 28:42. Similarly, Deut 23:19 uses the word תועבה (abomination), which is used quite broadly in Deuteronomy but in Leviticus, again, only in chaps. 18 and 20 for sexual offenses. Deuteronomy 24:16 uses the word חטא (sin), which is used in Leviticus four times (19:17; 20:20; 22:9; 24:15). As in Deut 24:16, the word stands in Lev 20:20 in the context of the relationship between parents and their children.

Some of these suggested relationships are not very strong, but in the overall picture it is at least not unlikely that there might be a contact between Lev 20:21 and Deut 25:5.

Now, if we assume that there is indeed such a relationship, then, as David Volgger has pointed out, this relationship would not work equally well in both directions.²³ If one sees no contradiction between the laws, Lev 20:21 might be the rule and Deut 25:5-10 the exception. If one sees a contradiction, however, then Lev 20:21 prohibits levirate marriage. The question whether there is a contradiction between the two laws is therefore inextricably linked with the question of the direction of dependence.

III. Conclusion

In sum, we have in both the relationship between Num 27:1-11 and Deut 25:5-10 and the relationship between Lev 20:21 and Deut 25:5-10 the same situation: if levirate marriage in Deuteronomy 25 is the older law, then the later laws in Leviticus and Numbers not only ignore levirate marriage but in fact abolish it without mentioning it. If, on the other hand, levirate marriage is the later law, then the earlier laws in Leviticus and Numbers are presupposed and Deut 25:5-10 can be read together with them as an addition and improvement.

In some cases it is possible that in one direction two laws can be read together, while in the other direction they cannot. Complementarity is not always reversible. Indeed, it is often the case that laws in Deuteronomy can be read together with laws in the Holiness Code or in Numbers (e.g., Num 35:16-21 as rule, Deut 19:4-6 as exception), while this does not work the other way around. This is one of the reasons why the generally accepted direction of dependence that goes from Deuteronomy to Leviticus and Numbers needs some reassessment. The reversal of this direction in the nineteenth century, which cemented the chronological priority of

²³ David Volgger, "Dtn 25,5-10: Per Gesetz zur Ehe gezwungen?" *BN* 114/115 (2002) 173-88, here 186 n. 31.

Deuteronomy over the Priestly material, led to a subversive and competitive reading of the different laws. It is quite illuminating to read, for example, the *Harmony of the Laws* (1563) of John Calvin. This harmony was possible only by reading the Deuteronomic law in a complementary and continual way alongside the Covenant Code and the Priestly legislation (H included). The common-law character of ancient Near Eastern jurisprudence simply is not compatible with the widespread approach of subversive reading of different pentateuchal laws. Since the law was not understood in a statutory way, it was simply not necessary to subvert and replace older laws, as Joshua Berman points out: “By recovering the common-law tradition of jurisprudence as a lens into the world of biblical law, we are reminded how the best criticism is often that which is leavened with the sensitivities of pre-modern ways of thinking.”²⁴

²⁴ Joshua Berman, “The History of Legal Theory and the Study of Biblical Law,” *CBQ* 76 (2014) 19-39, here 39.