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**Marriage and its obstacles in Jewish law**

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**Pittsburgh, 1999**

THE SLOW ROAD TO MONOGAMY

**urn:nbn:de:kobv:517-vlib-10168**

## THE SLOW ROAD TO MONOGAMY

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**M**onogamy is considered the only acceptable form of marriage in Western civilization; it treats men and women equally and provides the fullest opportunity for mutual development. Thousands of years ago the prophets of Israel used poetic imagery of God and Israel in a monogamous relationship and expressed this as their ideal; yet the path of Judaism in that direction has not been easy. Few of our thinkers through the ages have dealt with this issue; none has made it a matter of primary concern. The *halakhah* has moved in the direction of monogamy but, as we shall see, only slowly.

Sexual boundaries are one thing; monogamy quite another. Every religion has set boundaries for the sexual expressions of its adherents, as this has always been an area of human conflict.<sup>1</sup> The Bible did so initially through the family tales of Genesis and, subsequently, through legislation. These stories also represented the beginnings of the slow road to monogamy, an elusive ideal since its first presentation in the tale of the Garden of Eden.

The Genesis stories built families on the basis of polygamy, concubinage, and slave wives. They incidentally dealt with forbidden incestuous relationships. The family was oriented toward its masculine head, as the long genealogical lists make especially clear. Women played crucial but subsidiary roles, at least on the official level.

The legal literature of the Torah presented clearer definitions of marriage and placed major restrictions on sexual unions. The subsequent Jewish legal literature clarified those limits but only incidentally moved toward monogamy; it was a form of marriage that many favored, so some steps were taken in that direction. This

paper will begin with a brief discussion of restrictions on sexuality and then concentrate on the major obstacles to monogamy.

#### SEXUAL PROHIBITIONS

The sexual prohibitions of the Torah were limited to sexual relations with animals (bestiality),<sup>2</sup> between men (homosexuality),<sup>3</sup> with a series of close relatives (incest),<sup>4</sup> and with someone already married (adultery).<sup>5</sup>

Although the unfaithful wife was a frequent image of the prophetic literature, and the Book of Proverbs made recommendations about marriage, there was no discussion of legal marriage in the Bible after the Torah. Issues surrounding sexuality and marriage were important to the scholars of the Talmud, as we can see from four very large tractates (*Kiddushin*, *Ketubot*, *Niddah*, and *Yebamot*) that dealt almost exclusively with these subjects, as well as *Gittin*, which treated divorce. These matters were often considered extensively in other tractates as well. The rabbinic literature extended the detailed prohibitions of consanguinity to ascending and descending familial lines or through logical extension.<sup>6</sup> It also defined the relationships that were recognized as marriages.

The tractate *Kiddushin* described three ways of creating a legally effective marriage. The most common was a deed witnessed by two competent individuals and handed by the groom to the bride. This has remained an essential part of weddings through the ages.<sup>7</sup> The document was a contract stipulating specific obligations for both bride and groom, and grounds for divorce existed when these obligations were ignored or violated.

The minimum financial commitment made by the groom (200 *zuzim*) was considerable; it did not have to be paid at the time of the marriage but was due if the marriage was dissolved or the groom died.<sup>8</sup> The obligations of the husband included providing sexual satisfaction on a regular basis, which depended on the nature of his work,<sup>9</sup> as well as a home and maintenance according to his means. Should these diminish, however, the bride's living standards could not decline without her consent.<sup>10</sup> The groom also had to provide medical care, ransom, and funeral expenses.<sup>11</sup>

The bride had to be willing to engage in sexual relations unless she was unclean or had another good reason to refuse; she, or the servants she brought into the marriage, was responsible for the ordinary house work, consisting of grinding flour, baking, cooking, knitting, washing, nursing an infant, and mixing the husband's drink. The bride was personally responsible for making her husband's bed and for washing his face, hands, and feet.<sup>12</sup>

Since these provisions were so specific, they provided a framework for marriage, protected the wife, and began the road toward monogamy. The fact that an amount had been listed in the *ketubah*, either as *matan* or *mohar*, placed a considerable financial obligation upon the man. Multiple wives increased that obligation and, in case of infractions of the agreement on his part, could bankrupt him. The introduction of the *ketubah* undoubtedly limited polygamy to the wealthy even more than in earlier periods.

A marriage also took effect if an item of value was transferred between the bride and groom in the presence of two competent witnesses. This remains a part of the modern wedding in the

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form of presenting a ring or another object of value while the formula *harei at mekudeshet...* is recited.<sup>13</sup>

In addition, marriage could and can still be effected through intercourse (*biah*) when preceded by a statement indicating the wish to take this woman as a wife or if two witnesses have seen the couple leaving for a private place. Marriage is assumed, as intercourse was taken for granted. The later marriage ceremony seeks to combine all three elements. This, too, should be taken as a step toward monogamy, as it made marriage a formal, public, legal act, less likely to be disputed.

The Bible had established marriage through sexual relations,<sup>14</sup> and the rabbinic literature felt it necessary to include this along with the other two methods, although the authorities objected strenuously to marriage through sexual union alone. The general rabbinic opinion was that all sexual unions were to be taken seriously unless there was definite evidence to the contrary<sup>15</sup>—a situation, probably, often far from the minds of those engaged in the act.

On the other hand, the reality that the sexual drive was difficult to control led some scholars to suggest that if the urge was too strong, the individual should put on a dark garment, go to a neighboring community, and find a woman.<sup>16</sup> In addition, the Talmud made it possible for those away on trading trips to take wives on a temporary basis, as brief as a single day. They could, of course, also take wives on a permanent basis in the community of their destination if they visited there often. This, too, was a bow to reality. There was no numerical limit, but four was suggested.<sup>17</sup> The fact that these statements survived in the texts suggests that marriage

and sexuality were approached with a high sense of reality, but also that the struggle toward monogamy had only begun.

#### PROHIBITED MARRIAGES

Major categories of individuals who could not be married were listed in the Bible;<sup>18</sup> in addition were the prohibitions against marriage with neighboring nations, with which we shall not concern ourselves here. The list of consanguineous relationships as expanded by the later rabbinic literature was generally accepted, and the questions that arose in the later rabbinic literature tended to be around the edges of this legislation. This, too, should be viewed as a step toward monogamy, since such relationships within the family circle, if permitted, could easily multiply. The prohibited marriages were castigated but rarely annulled. The rabbis in every period refrained from taking this step, possibly because of potential problems with offspring, although some exceptions are found in the literature.<sup>19</sup> This failure to annul, of course, weakened the prohibitions against these marriages, but not enough to make them a serious problem.

#### ADULTERY AND MARRIAGE

The literature takes adultery very seriously; it was a break in the fundamental basis of marriage. In the biblical period the death penalty was prescribed; later, flogging.<sup>20</sup> In addition, the promises made in the *ketubah* were invoked, and the guilty party paid heavily. Every effort was made to keep the individuals who had been engaged in an adulterous relationship from getting married; such marriages were prohibited.<sup>21</sup> This, of course, is part of an effort to limit adultery within the Jewish community; and,

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among those groups that had already established monogamy, to strengthen it. There were exceptions in which the authorities bowed to the reality that the individuals involved would simply live together without the blessings of Judaism and the official community. Rather than see this occur, they decided to accept such a marriage, if it had already taken place, presumably through an officiant who was unaware of the adultery.<sup>22</sup> We may see this as a way of maintaining some control over the sexual lives of the community and vaguely as a step toward monogamy as it sought to provide a way back into the community for those who had trespassed.

### POLYGAMY

The major obstacle to a monogamous union was polygamy, which was very much part of the Bible. The lives of the Patriarchs indicated that polygamy was well established and was taken for granted. The obvious problems of the status of each wife and the status of the offspring were raised in a realistic manner in Genesis and, later, within the royal families of Israel and Judea. Polygamy, of course, was possible only for the wealthy. It waxed and waned in Jewish life; Epstein indicated that it virtually ceased at the end of the biblical period but resumed in Hellenistic times.<sup>23</sup> Some groups, such as the Zadokites of Damascus<sup>24</sup> and, later, the Karaites,<sup>25</sup> legislated monogamy. Most talmudic scholars, however, accepted polygamy.<sup>26</sup> Although the ideal of monogamous marriage existed, it was not pursued with vigor.

Imperial Rome sought to eliminate polygamy throughout the empire, but as one can see from repeated decrees by Theodosius (379-395), Justinian (527-565), and Leo the Philosopher (886-912), with only limited success.<sup>27</sup> According to Epstein, matters

changed through popular pressure in the Gaonic period (700–110), when clauses protecting the first wife were inserted into the *ketubah*. This method was used particularly by wealthy families to protect the status of their women. Such examples existed in *ketubot* found in the Cairo Geniza and were cited in Gaonic responsa. They stated that

he may not marry or take during the bride's lifetime and while she is with him another wife, slave-wife, or concubine except with her consent, and if he does...he shall from this moment be under obligation to pay her the *ketubah* in full, and release her by a bill of divorcement by which she shall be free to remarry.<sup>28</sup>

We can conclude that polygamy continued to be accepted in Jewish life when tolerated by the surrounding society. This meant that it was practiced to some extent in the Near East throughout history.

In Christian Europe the decree (*herem*) ascribed to Rabbenu Gershom (960–1040), prohibited polygamy in Ashkenazic lands; this may have been due to a slow internal development<sup>29</sup> or have brought Jewish practice into line with the surrounding society. Falk and, earlier, Frankel, showed that the decree was in any case part of a long series of steps taken in this direction.<sup>30</sup> The medieval legal discussions of polygamy did not deal with the nature of marriage or the status of women; they mainly treated the exceptions to monogamy that might be allowed in case of childlessness or the *yibbum* (levirate marriage to the widow of a deceased brother). Although the *herem* of Rabbenu Gershom prohibited the individual from marrying an additional wife, special permission for exceptions could be provided by one hundred rabbis from three districts—in other words, in extraordinary circumstances, which will be discussed later. These rulings, along with the nature of the



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contemporary discussion, indicated that monogamy was established as the practical road of Ashkenazic Jewry; Asher ben Yehiel (1250–1328) considered monogamy binding in his code. From the contemporary responsa of Solomon ben Aderet (1235–1310), we can see that it was not accepted in Spain or in Provence.<sup>31</sup>

Polygamy was therefore almost eliminated in northern Europe, although it continued in the Muslim-dominated lands of the Mediterranean. When we view polygamy in Islamic society, we find it taken for granted, with virtually no statements about the ideal of monogamy; no efforts to eliminate polygamy were successful in Muslim-dominated societies.

### EXCEPTIONS FROM THE *HEREM* OF RABBENU GERSHOM

Despite the force of Rabbenu Gershom's decree, it was not seen as an absolute ban on polygamy in Ashkenazic lands or in the border areas where some communities followed Sephardic customs. Exceptions were permitted, albeit seldom. The fact that other ways of dealing with the exceptional circumstances outlined below were not used, however, indicated a reluctance to move decisively in this direction. Other remedies could have been found for every instance in which polygamy was invoked, but this was not done.

The various discussions of the *herem* dealt with four instances in which polygamy could be permitted even in lands where it was normally not practiced: levirate marriages, a wife's barrenness, a wife's insanity, and special instances of a wife's improper conduct.

Let us begin with the levirate marriage, which represented a major area of concern through the ages; *yibbum* was intended to ensure that a deceased brother's lineage would continue. The widow could be released from her obligation to her brother-in-law through the ceremony of *halitzah*.<sup>32</sup> In Sephardic lands, naturally, *yibbum* continued to be practiced and so led to numerous cases of polygamy; it was also condoned in northern Europe, although there *halitzah* became the norm. This question was never completely resolved.<sup>33</sup>

According to the *Mishnah*, which after all based itself on the biblical command "be fruitful and multiply,"<sup>34</sup> a woman had to be divorced or a second wife taken if she remained barren after ten years. After some initial discussion such exceptions were not permitted in northern Europe on these grounds.<sup>35</sup>

A wife's insanity or her conversion to Christianity, both of which made divorce impossible, led to the suspension of the *herem*. It was similarly not enforced when the conduct of the wife demanded a divorce according to talmudic law but she was unwilling to accept it.<sup>36</sup> In northern Europe the authorities were reluctant to make any exceptions to the *herem* after the first generation, nevertheless such bans did take place. In Sephardic lands nothing changed.

#### CONCUBINAGE

Polygamy was not the only obstacle to a monogamous marriage. The taking of two or more wives could also occur through concubinage (*pilegshut*). Concubines were women of lower status than the main wife, if there was one. Concubinage occurred

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frequently in the biblical period, most often among the kings of Israel.<sup>37</sup> We, of course, find it already among the wives of the Patriarch Jacob, so that Rachel and Leah were first-rank wives whereas their servants had an inferior status. We know little about the status of subsidiary wives in the biblical period.<sup>38</sup> The Genesis tales demonstrated that when secondary wives produced children, these progeny were on an equal footing with those of the primary wives. According to Epstein, concubinage died out in the late biblical period but was reintroduced in Hellenistic and Roman times. The Romans had curbed polygamy but permitted concubinage until the time of Constantine (326 C.E.).<sup>39</sup>

The Talmud made an effort to regularize the concubine, and in the Babylonian Talmud she was seen as possessing neither *kiddushin* nor *ketubah*; according to the Palestinian Talmud, however, a concubine had *kiddushin* but no *ketubah*; in other words, it opted for partial protection of the woman.<sup>40</sup> It was the Babylonian definition that most later authorities followed:<sup>41</sup> they denied married status to the concubine and so denigrated this relationship. Rashi (1040–1105), Ribash (1326–1408), and others, followed the Jerusalem Talmud. The two definitions may refer to two levels of concubinage or may reflect errors in the original Talmudic text.<sup>42</sup> The sources agree that we were dealing with an individual of intermediate status that did not have all the rights of a married wife but on the other hand was not to be considered a prostitute. Among Medieval authorities, Maimonides (1135–1204) protested vigorously against concubinage and sought to eliminate it by claiming that it was a right limited to royalty and not permitted to ordinary Jews.<sup>43</sup> He did not engage in a discussion of monogamy or an ideal state of marriage but treated it as a practical matter. He considered the woman involved in this relationship a prostitute (*zona*); both she

and her lover were to be whipped.<sup>44</sup> Jacob b. Asher (d. 1340) and Joseph Caro (1488–1575) later prohibited concubinage.<sup>45</sup> Concubines were permitted, however, by many Spanish and Provençal authorities such as Abraham ben David of Posquières (1125–1198), Solomon b. Adret (c. 1235–c.1310), Asher ben Jehiel (c. 1250–1327), and Menachem b. Solomon Meiri (1249–1316), although they disagreed on the status of the concubine. Nahmanides (1194–1270) accepted concubines, but he warned against the moral evil involved and discussed this on a moral plane.<sup>46</sup> After this intense period of discussion in the early Middle Ages, the debate failed to proceed much further.

Concubines were accepted, albeit reluctantly, in the Middle Ages among both Sephardic and Ashkenazic Jews and were often considered outside the *herem* of R. Gershom.<sup>47</sup> Moses Isserles (1520–1572) permitted concubines as long as they were careful about *mikveh*. To him, the ideal of ritual cleanliness loomed more important than monogamy.<sup>48</sup> Most authorities cited here based their prohibition and cautions on the deuteronomic law prohibiting prostitution in Israel.<sup>49</sup>

The general mood of the rabbinic authorities was to limit concubinage or accept it *bediavady*. The *herem* of R. Gershom was interpreted to include concubines in the Ashkenazic community but was not absolutely enforced, so concubinage in various forms continued until the beginning of the nineteenth century. Although the practice of concubinage became infrequent in the Mediterranean basin after the sixteenth century, it was discussed in the codes and by an occasional responsum. A curious exception was presented in the eighteenth century by Jacob Emden, who favored the institution as a way of increasing the population of the Jewish community.<sup>50</sup>

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Sexual relationships with gentile slaves and servants were, of course, prohibited; some responsa dealt with these matters.<sup>51</sup>

We can see in the discussions of concubinage and polygamy a slow movement toward monogamy, first in Ashkenazic lands and then in the Mediterranean basin. It was driven more by popular consent than by rabbinic leadership. Absolutes were avoided and so was radical change. If this had been a major matter of principle, no such division in family life between the Ashkenazic and Sephardic communities would have developed. The distinction was tolerated, unlike the views of various other sectarian groups within Judaism. The Ashkenazic discussions of this question were known in the Sephardic community, but they brought about no change.

### INFORMAL "RELATIONSHIPS" AND RULINGS ON VIRGINITY

Casual sexual relationships, of course, have always been a danger to monogamy. Proverbs warned against prostitutes. The Bible prohibited prostitution and made it punishable by death;<sup>52</sup> the rabbinic tradition changed this to whipping.

Casual sexual relationships were problematic in a polygamous or a monogamous society. Every effort was made to keep young women from such relationships. Precautions were taken to ensure their virginity through a strict regime of chaperonage, and the rules continued after engagement, although the standards were stricter in Galilee and Babylonia than in Judea,<sup>53</sup> and men and women were to be punished equally. The traditional authorities also did their best to protect the female from false charges and erroneous assumptions about her lack of virginity; anyone wishing to bring charges against a bride found it extremely difficult. The biblical text

made provision for an accusation of nonvirginity brought by the groom after the wedding night. The parents would proceed with the defense of their daughter. If, indeed, she was not a virgin, she was liable for the death penalty. If she had been accused erroneously, her husband was fined a hundred pieces of silver and forfeited the right of ever divorcing her.

All this was discussed further in the Talmud and later literature.<sup>54</sup> One authority, however, indicated that if such an accusation was brought before him, the young man was to be whipped, as the accusation indicated that he himself had engaged in illicit intercourse earlier. Another limited such a challenge to a man previously married, since he possessed legitimate experience.<sup>55</sup> Furthermore, after a girl is more than twelve years and six months old (*bogeret*), the hymen may disappear naturally and no sign of virginity remain. Should she have lost her virginity by accident, her *ketubah* was reduced by 100 *zuzim*, a large sum; no such reduction was made if she claimed rape after betrothal. It was generally made almost impossible for a groom to file a complaint of nonvirginity.<sup>56</sup>

A *ketubah* normally assumed that the bride was a virgin, unless it was known that she was a widow or divorced, and the rabbis have not concerned themselves with the possibility that this was not so.<sup>57</sup> The rabbinate did not seem to hesitate to use the term "virgin" in the *ketubah* even when it was in doubt. The Gaonim composed a special *berakhah* to be recited by the groom on his wedding night if his wife was a virgin.<sup>58</sup> The recital of such a blessing if the wife was not a virgin would be *levatalah*. The ritual was eliminated in post-Gaonic times.

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In an effort to encourage marriage and long-term family relationships, the rabbinic authorities, through a strict system of chaperonage that applied to women of all ages, married and single, did their best to discourage casual sex or even the vaguest suspicion of it.<sup>59</sup> There are numerous discussions about the details in the rabbinic literature. These rules were effective, but there were infringements in every age, as thousands of responsa attest.

Discussions in the responsa inevitably dealt with women, and with men only when the accusations were false. Monogamy was enforced in one direction only; and although many moral statements were addressed to men, they were not followed by legal enactments.

### THE EMANCIPATION AND MODERN TIMES

In the period of the Emancipation, monogamy was taken for granted throughout the Western world. The most decisive statement was given in response to a question of Napoleon in 1807. The assembled dignitaries could confidently state monogamy was firmly established, and this statement confirmed that fact.<sup>60</sup>

None of the numerous synods and conferences held in Europe or North America that led to the establishment of the Reform and Conservative movements felt it necessary to discuss monogamy. They dealt with related matters frequently as they dealt with the marriage ceremony, divorce, and various status questions.<sup>61</sup> Many Reform thinkers have treated the status of women and their rights; these works have included discussions of marriage and the role of men and women in marriage, and each has assumed monogamy and made it the basis of its discussion.<sup>62</sup> Discussion of monogamy in the Reform and Conservative responsa literature has been very limited.

The State of Israel has eliminated polygamy even among its Sephardic citizens; immigrants from lands where polygamy continued were forced to choose one wife while providing maintenance for any others.<sup>63</sup> In 1950, this mainly affected immigrants from Yemen and a few other lands.

#### CONCLUSION

We have traced the slow movement of Judaism toward monogamy. Two decisive developments were the introduction of the *ketubah* in the talmudic period and the ban attributed to Rabbenu Gershom in the Middle Ages. Each of these steps represented a major shift, but the second was clearly driven as much by external as internal forces, so it did not spread to the Sephardic community. One must also note the absence of strong leadership, either halakhic or philosophical, in this direction. Female status questions were of little importance to Jewish thinkers until modern times and the advent of the liberal Jewish movements.

In the last decades of the twentieth century, some of the issues discussed in this paper have disappeared, but monogamy remains problematic, especially in the face of a new development: we may have attained it in one sense, but not in another, as we now have frequent consecutive marriages. With divorce frequent, half of Jewish adults will have more than one spouse during their lifetimes, and a fair number will have more than two. This will be due not to death as in previous periods, but to divorce. This means that although monogamy exists, the urge toward polygamy and polyandry has taken a different turn. It differs from previous situations and presents a different threat to monogamy and even more to the family as the most significant unit in Jewish life. This means that



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when we speak of monogamy, we are no longer talking of a lifelong commitment, but of one that is more time bound. We have only begun to deal with these new conditions and with the changes in basic assumptions to which they are bound to lead.

These factors, in addition to the movement toward women's equality and the separation of sexual activity and reproduction, have led to a system of monogamy brought about by personal wishes rather than by religious, economic, or social forces. In a period when new technologies and new freedom from a wide variety of constraints have made virtually anything and any "life style" possible, monogamy is doing reasonably well. Discussions on an ethical and philosophical level have begun. We are no longer limited to practical halakhah. Halakhists have also added a moral tone when they deal with these matters. The road in this direction has been long and difficult and much still lies ahead.

### Notes

1. As we can see in the tale of Abraham and Pharaoh (Gen. 13:10-20) or David and Bathsheba (2 Sam. 11).
2. Exod. 22:28; Lev. 18:23, 20:15-16; Deut. 17:21.
3. Lev. 18:22, 29:13.
4. Lev. 18:20; Deut. 27.
5. Exod. 20:13; the law went further and prohibited coveting, Exod. 20:14.
6. *Yeb.* 21a; *J. Yeb.* 2.4; *Yad, Hil. Ishut* 1.6; *Shulhan Arukh, Even Haezer* 25:24.
7. *Kid.* 9a; *Shulhan Arukh, Even Haezer* 32.1-4.
8. *Ket.* 54a.

9. *Ket.* 62b.
10. *Ket.* 48a; 61a.
11. *Ket.* 46b, 51a, 52a.
12. *Ket.* 61a, 63b.
13. *Kid.* 2a, b; *Shulhan Arukh, Even Haezer* 27:1.
14. Gen. 4:1 "knowing."
15. *Kid.* 9b; *Yeb.* 107a; *Ket.* 73a; *Git.* 81b; *Shulhan Arukh, Even Haezer* 33:1.
16. *Moed Katan* 17a; *Tos. to Kid.* 40a.
17. *Yeb.* 44a, 65a; S.D. Goitein, *A Mediterranean Society*, Vol. 3 (Berkeley, 1978), p. 206f.
18. For a full list see Moses Mielziner, *The Jewish Law of Marriage and Divorce* (Cincinnati, 1884), pp. 33ff.
19. R. Asher decided that the rabbinic authorities had the power to annul marriages that violated rabbinic law. He justified this as a fence around the law. Divorce could therefore be forced; *Sher, Responsa* 43.8, cited in A. H. Freiman, *Seder Kiddushin Venisuin* (Jerusalem, 1964), p. 71. Some others followed him, but this was not the normal path.
20. Death penalty Lev. 20:10; Deut 22:22; Mak. 7a.
21. The Bible provided the death penalty for both parties (Lev. 20:10; Deut. 22:24), and this was continued into Mishnaic times and discussed in the Talmud (*Mat.* 27:27, 35; *San.* 6.3; *San.* 50b ff). Like all capital punishment, this became theoretical because of the reluctance of the rabbis to invoke it. They made it so difficult that it was virtually annulled (*San.* 40b-41a). Instead, the adulterers were whipped (Whipping, *Shulhan Arukh, Even Haezer* 11; *Yad Hil. Issurei Biah* 1.8).  
In later times a man was to divorce his adulterous wife, and this could be done even against her will (Meir of Rothenberg, *Responsa* 245). The adulterer could not marry her (*Yeb.* 24b; *Shulhan Arukh, Even Haezer* 11.1).
22. If the marriage had taken place (*bediavad*) it was recognized, and the parties were not forced to divorce (*Shulhan Arukh, Even Haezer* 11.2; *Otzar Haposkim, Even Haezer* 11.1, 44).
23. L.M. Epstein, *Marriage Laws in the Bible and Talmud* (Cambridge, Mass., 1942), pp. 3-33.

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24. L. Ginzberg, *Eine unbekannte jüdische Sekte* (New York, 1922), pp. 24-25.
25. A. Neubauer, *Geschichte des Karäertums* (Leipzig, 1866), p. 46.
26. *Suk.* 27a; *Yeb.* 15a, b; 44a; Justin Martyr, *Dialogue* 134, 141; in some instances the second wives were in different cities (*Yeb.* 37b; *Yoma* 18b). Earlier, Josephus, *Antiquities* 18 (1, 2). As polygamy was less common in the Land of Israel, it could be grounds for the first wife's suit for divorce, but not in Babylonia (*Yeb.* 65a).
27. J. Starr, *The Jews in the Byzantine Empire* (Athens, 1939), p. 144.
28. L. Epstein, *Jewish Marriage Contract* (New York, 1927), p. 272; J. Mann, *Texts and Studies* (Cincinnati, 1931-38), Vol. 2, p. 177; Goitein, *A Mediterranean Society*, (Berkeley, 1991), Vol. 3, p. 147.
29. The decree itself was lost long ago, but it was cited by many early sources. M. Güdemann, *Geschichte des Erziehungswesens* (Vienna, 1888), Vol. 3, pp. 115-119.
30. Z.W. Falk, *Jewish Matrimonial Law in the Middle Ages* (Oxford, 1966), pp. 1, 24-34.
31. Neuman, *The Jews of Spain*, Vol. 2, pp. 52ff; Solomon ben Aderet, *Responsa* 1 (812, 1205); 3 (446); 4 (180, 257, 280).
32. Both *yibbum* and *halitzah* are based on Deut. 25:5-10.
33. *Shulhan Arukh*, *Even Haezer* 1.10; Caro and Isserles differ; the commentaries cite numerous responsa on each side; *Sefer Hassidim* 284; Jacob Weil, *Responsa* 188.
34. Gen. 1.28; 9.1, 7; *M. Yeb.* 6.6.
35. *Tur Even Haezer* 1.1, *Bet Yosef*, and other commentaries; Solomon Luria, *Responsa* 65.
36. R. Joel Tam or earlier, according to L. Finkelstein, *Jewish Self-Government in the Middle Ages* (New York, 1924), Vol. 2, Chap. 2. *Shulhan Arukh*, *Even Haezer* 1.10 and commentaries; *Otzar Haposkim*, *Even Haezer* 1.10 (61).
37. 2 Sam. 3:7, 21:8ff, 5:13; 1 Kings 11:3; 1 Chron. 11:21.
38. L. Epstein, "The Institution of Concubinage among Jews." *Proceedings of the American Academy for Jewish Research*, New York, Vol. 6, pp. 153ff, deals with the various types of subsidiary wives in the ancient period.
39. F. Schulz, *Classical Roman Law*, (Oxford, 1951), p. 137.

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40. *San.* 21a; *J. Ket.* 5.2, 29b.
41. Caro to *Yad, Melachim* 4.4; de Botton to *Yad, Melachim*; Radbaz, *Responsa* Vol. 5 (225), Vol. 7 (33); Adret, *Responsa* Vol. 4 (314).
42. G. Ellinson, *Nisu-in Shelo Kedat Mosheh VeYisra-el*, pp. 40ff.
43. *Yad Hil. Melachim* 4.4.
44. *Yad Hil. Ishut* 1.4.
45. *Tur* and *Shulhan Arukh, Even Haezer* 26.1.
46. *Responsa* 284; commentary to Gen. 25:6.
47. *Tseida Laderekh* 3 (1, 2); Aderet, *Responsa* Vol. 1 (1205); Vol. 5 (314); Rabbenu Nissim, *Responsa* 68; Asher, *Responsa* 37.1; Meir of Padua, *Responsa* 19; *Shulhan Arukh, Even Haezer* 13.7; *Otsar Haposkim, Even Haezer* 26.3ff.
48. Isserles to *Shulhan Arukh, Even Haezer* 26.1.
49. Deut. 23, 19ff; Lev. 19:29, 21:9.
50. Jacob Emden, *Sheelot Ya-avets* 2 (16).
51. *M. Temurah* 6.2; *Bet Yoseph* to *Tur Even Haezer*, start of *Kiddushin*; *Yad, Hil. Issurei Biah* 12.13.
52. Lev. 21:7-9; Deut. 22:20-22; Jubilees 20:4.
53. *M. Ket.* 1.4, 5; *Ket.* 7b; 12a; *J. Kid.* 64b.
54. Deut. 22:13-19; *Ket.* 10a, 46a.
55. *Ket.* 10a.
56. *Ket.* 10a, b; 36a; *Yad Hil. Ishut*; *Shulhan Arukh, Even Haezer* 39.
57. *Nahalat Shiva* (Warsaw, 1884), 12-15; Benzion Schereschewsky, *Dinei Mishpachah* (Jerusalem, 1984), p. 99.

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58. B. Lewis, *Otzar Hagaonim*, Vol. 8; *Ket.* pp. 14-15; Lawrence A. Hoffman, *The Canonization of the Synagogue Service* (New York, 1991), p. 136.
59. *Ned.* 20a; *Git.* 81a; *Ket.* 27b ff; *A. Z.* 36b; *San* 21b; *Kid.* 80b; *J. Kid.* 66b; *Shulhan Arukh*, *Even Haezer* 22.4 and commentaries; *Yad Hil. Issurei Biah* 21.27; *Arukh Hashulkhan*, *Even Haezer* 119.25-28.
60. For a summary of the conferences see Central Conference of American Rabbis *Yearbook* (Cincinnati, 1890), Vol. 1, pp. 80ff; Softon D. Temkin, *The New World of Reform* (Bridgeport, 1974), pp. 51ff.; Walter Jacob (ed.), *The Changing World of Reform Judaism—The Pittsburgh Platform in Retrospect* (Pittsburgh, 1985), pp. 91ff.
61. "Resolutions of Past Conferences," Central Conference of American Rabbis *Yearbook* (Cincinnati, 1891), Vol. 1, pp 80-125.
62. Works by Samuel Cohon, Eugene Borowitz, Roland Gittelson, Solomon B. Freehof, and Emil Fackenheim.
63. Schereshevsky, *Dinei Mishpachah* (Jerusalem, 1984), pp. 72ff, 213; Paltiel Dyban, *Dinei Niisuin Vegerushin* (Tel Aviv, 1956), p. 153.