

Subversive Texts in the Torah 2

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3 Betrothal of a maidservant

(שמות כא:ז-יא, Exod 21:7-11):

ז וְכִי־יִמְכַר אִישׁ אֶת־בִּתּוֹ לְאִמָּה לֹא תִצֵּא כְּצֵאת הָעֶבְדִּים:

ח אִם־רָעָה בְּעֵינַי אֲדַנֶּיהָ אֲשֶׁר־לֹא [לוֹ] יַעֲדָה וְהִפְדָּה לְעַם נְכָרִי
לֹא־יִמְשַׁל לְמִכְרָהּ בַּבְּגָדוֹ־בָּהּ:

ט וְאִם־לְבָנוּ יִיעָדְנָה כְּמִשְׁפֹּט הַבָּנוֹת יַעֲשֶׂה־לָּהּ:

י אִם־אַחֲרַת יִקַּח־לוֹ שְׂאֵרָה כְּסוּתָהּ וְעִנְתָּהּ לֹא יִגָּרַע:

יא וְאִם־שְׁלֹשׁ־אֵלֶּה לֹא יַעֲשֶׂה לָּהּ וַיִּצְאָה חֲנָם אִין כְּסָף:

7. When a man sells his daughter as a slave, she shall not be freed as male slaves are.

8. If she proves to be displeasing to her master, who designated her for himself, he must let her be redeemed; he shall not have the right to sell her to outsiders, since he broke faith with her.

9. And if he designated her for his son, he shall deal with her as is the practice with free maidens.

10. If he marries another, he must not withhold from this one her food, her clothing, or her conjugal rights.

11. If he fails her in [any of] these three ways, she shall go free, without payment.

4.1 The *shifcha charufa* (Leviticus 19:20 כ ויקרא יט כ)

כ וְאִישׁ כִּי-יִשְׁכַּב אֶת-אִשָּׁה שְׂכִיבַת-זָרַע וְהוּא שְׂפִיחָה נְחֻרְפֶּת לְאִישׁ
וְהַפְּדִיָּה לֹא נִפְדָּתָה אִו חֲפִשָּׁה לֹא נָתַן-לָהּ בְּקָרְתָּ תְּהִיָּה לֹא יוּמָתוּ
כִּי-לֹא חֲפִשָּׁה:

20. If a man lies carnally with a woman, and she is a handmaid designated for a man, and she had not been [fully] redeemed nor had her document of emancipation been granted her, there shall be an investigation; they shall not be put to death, because she had not been [completely] freed.

4.2 Rashi's commentary on the above.

<http://parsha.blogspot.co.uk/2012/05/who-was-shifcha-charufa.html>

designated for a man: נְחָרְפָּת, designated and specified for a [particular] man. And [regarding this term נְחָרְפָּת] I do not know of [a term] resembling it anywhere in Scripture, but the Scripture is speaking of a Canaanite handmaid, partly a handmaid and partly a free woman [i.e., she belonged to two partners and one freed his part of her], who is betrothed to a Hebrew slave, who is permitted to [marry] a handmaid. — [Torath Kohanim 19:52; Kereithoth 11a]

and she had not been [fully] redeemed: Heb. נִפְדָּתָה לֹא וְהִפְדָּהּ, she is redeemed, but not redeemed. And when the unqualified term פְּדִיוֹן, “redemption” is employed, it means [redeeming with money. — [Torath Kohanim 19:53]

nor had her document of emancipation been granted her:[the unqualified term חֲפֵשׁ, “freeing,” refers to doing so] with a document [of release]. — [Torath Kohanim 19:53]

there shall be an investigation: Heb. תִּהְיֶה בְּקֹרֶת [which will result in] the woman being given lashes but not the man (Torath Kohanim 19:54) The court is obligated to investigate the matter in order not to sentence him [her] to death, since “she had not been [completely] freed” [and therefore,] her marriage is not completely binding.

Our Rabbis, however, learned from [this verse], that whoever is sentenced to lashes [as this woman, those lashes] shall be accompanied by a “recitation” [בְּקִרְיָאָה בְּקִרְתָּהּ, derived from the בְּקִרְתָּהּ, so that the phrase תִּהְיֶה בְּקִרְתָּהּ is expounded to mean “she is to be given lashes with a קִרְתָּהּ, a recitation.” And what is the recitation referred to here?

It is] that the judges who mete out the lashes, shall recite to the one receiving them (Deut. 28:58-59), “If you will not observe to fulfill [all the words of this Torah]...the Lord will bring upon you...uniquely [horrible] plagues!” - [Kereithoth 11a]

because she had not been [completely] freed: And therefore, the man is not liable to the death penalty because of [his intimacy with] her, since her marriage is not binding. It follows then, that if she had been freed, her marriage would be binding, and he would be liable to the death penalty. — [Torath Kohanim 19:55; Gittin 43b]

4.3 Shadal's alternative interpretation Samuel David Luzzatto (1800-65)

As in the commentary of the Ramban, hefker, ownerless. That is to say that she does not have the law of a fully-married woman since he did not free her, and so she is considered like hefker in the matter that they shall not die as adulterers.

And in my opinion, and in the opinion of Ibn Ezra, she was an Israelite woman and not a Canaanite. And in the opinion of Chazal (Krisus 11a), even the Canaanite, if she were freed, her kiddushin would be kiddushin like any daughter of an Israelite.

And the reason for the commandment is in order that the owner does not think to make use of her as a maidservant, as well as for intercourse. Rather, he should either free her and take {=marry} her in the proper law of daughters {of Israel}, or else she shall be hefker to him and to others equally.

And behold, this transgression as well is a shegaga {accident} of ignorantia juris {ignorance of the law, which apparently is so an excuse}, just as above in perek 5, for the one who sleeps with her believes that she is literally hefker, and that she is permitted to every man, while the matter is not so -- rather, she is bikores {=hefker} after the fact, bedieved, in terms of that they shall not die, but she is not bikores such that anyone can sleep with her lechatchila.

5.1: The captive woman (Deuteronomy 21:10-14 דברים

(כא:י-יד)

י כִּי־תִצָּא לַמִּלְחָמָה עַל־אֲבוֹיָךָ וּנְתָנֹוּ יְהוָה אֱלֹהֶיךָ בְּיָדְךָ וְשַׁבִּיתָ שְׁבוּיָו:

י א וְרָאִיתָ בַשְּׁבוּיָה אִשָּׁת יִפְת־תַּאֲר וְחַשְׁקֶתָ בָּהּ וְלִקַּחְתָּ לָּךְ לְאִשָּׁה:

יב וְהִבֵּאתָהּ אֶל־תְּנוּךְ בֵּיתְךָ וְגִלַּחְתָּהּ אֶת־רֹאשָׁהּ וְעָשִׂיתָהּ אֶת־צַפְרֵינֶיהָ:

יג וְהִסְיָרָהּ אֶת־שִׁמְלֹת שְׁבוּיָהּ מֵעַלֶּיהָ וַיֵּשְׁבָהּ בְּבֵיתְךָ וּבִכְתָּהּ אֶת־אֲבוֹיָהּ

וְאֶת־אִמָּהּ יָרַח יָמַיִם וְאַחַר כֵּן תָּבוֹא אֵלֶיהָ וּבַעֲלֹתָהּ וְהִיְתָה לָּךְ לְאִשָּׁה:

יד וְהָיָה אִם־לֹא חָפְצָתָ בָּהּ וְשַׁלַּחְתָּהּ לְנַפְשָׁהּ וּמָכַר לֹא־תִמְכְּרָנָהּ בַּכֶּסֶף

לֹא־תִתְעַמְרָ בָּהּ תַּחַת אֲשֶׁר עָנִיתָהּ: ס

10. When you take the field against your enemies, and the Lord your God delivers them into your power and you take some of them captive, 11. and you see among the captives a beautiful woman and you desire her and would take her to wife,

12. you shall bring her into your house, and she shall trim her hair, pare her nails, 13. and discard her captive's garb.

She shall spend a month's time in your house lamenting her father and mother; after that you may come to her and possess her, and she shall be your wife.

14. Then, should you no longer want her, you must release her outright. You must not sell her for money: since you had your will of her, you must not enslave her.

5.2: The hated wife

(דברים כא:טו-יז 21:15-17 Deuteronomy)

טו כִּי־תֵהֵי־לְךָ לְאִישׁ שְׁתֵּי נָשִׁים הָאֶחָת אֲהוּבָה וְהָאֶחָת שְׂנוּאָה וַיִּלְדוּ־לְךָ בָנִים הָאֲהוּבָה וְהַשְּׂנוּאָה וְהָיָה הַבֵּן הַבְּכֹר לַשְּׂנוּאָה:

טז וְהָיָה בַּיּוֹם הַנִּחְיָלוֹ אֶת־בָּנָיו אֶת אֲשֶׁר־יְהִיָּה לוֹ לֹא יוּכַל לְבַכֵּר אֶת־בֶּן־הָאֲהוּבָה עַל־פְּנֵי בֶן־הַשְּׂנוּאָה הַבְּכֹר:

יז כִּי אֶת־הַבְּכֹר בֶּן־הַשְּׂנוּאָה יִכִּיר לְתֶת־לוֹ פִּי שְׁנָיִם בְּכָל אֲשֶׁר־יִמָּצֵא לוֹ כִּי־הוּא רֵאשִׁית אָנֹכִי לוֹ מִשְׁפָּט הַבְּכֹרָה: ט

15. If a man has two wives, one loved and the other unloved, and both the loved and the unloved have borne him sons, but the first-born is the son of the unloved one—

16. when he wills his property to his sons, he may not treat as first-born the son of the loved one in disregard of the son of the unloved one who is older.

17. Instead, he must accept the first-born, the son of the unloved one, and allot to him a double portion of all he possesses; since he is the first fruit of his vigor, the birthright is his due.

5.3.1: The rebellious son

(דברים כא:יח-כא כא-כא) (Deuteronomy 21:18-21)

יח כִּי־יִהְיֶה לְאִישׁ בֶּן סוֹרֵר וּמוֹרָה אֵינָנו שְׁמַע בְּקוֹל אָבִיו וּבְקוֹל אִמּוֹ
וַיִּסְרוּ אֹתוֹ וְלֹא יִשְׁמַע אֲלֵיהֶם:

יט וַתִּפְּשׂוּ בּוֹ אָבִיו וְאִמּוֹ וְהוֹצִיאוּ אֹתוֹ אֶל־זִקְנֵי עִירוֹ וְאֶל־שַׁעַר מְקוֹמוֹ:
כ וְאָמְרוּ אֶל־זִקְנֵי עִירוֹ בְּנֵנוּ זֶה סוֹרֵר וּמוֹרָה אֵינָנו שְׁמַע בְּקוֹלֵנוּ זֹלָל
וְסָבָא:

כא וְרָגְמָהוּ כָּל־אֲנָשֵׁי עִירוֹ בְּאֲבָנִים וְמֵת וּבַעֲרַת הָרַע מִקֶּרֶב דָּר
וְכָל־יִשְׂרָאֵל יִשְׁמְעוּ וַיִּירָאוּ:

18. If a man has a wayward and defiant son, who does not heed his father or mother and does not obey them even after they discipline him,

19. his father and mother shall take hold of him and bring him out to the elders of his town at the public place of his community.

20. They shall say to the elders of his town, “This son of ours is disloyal and defiant; he does not heed us. He is a glutton and a drunkard.”

21. Thereupon the men of his town shall stone him to death. Thus you will sweep out evil from your midst: all Israel will hear and be afraid.

5.3.2: Commentary on the above

https://www.jewishvirtuallibrary.org/jsource/judaica/ejud_0002_0017_0_16525.html

It appears that this law was intended to limit the powers of the *pater familias*: the head of the household could no longer punish the defiant son himself, according to his own whim, but had to bring him before the elders (i.e., judges) for punishment.

In earlier laws (eg., Hammurapi Code, nos. 168, 169) only the father had to be defied; in biblical law it must be both father and mother, and the father cannot act without the mother's concurrence.

If either was dead (Sif. Deut. 219) or refused to join in the prosecution, the son could not be indicted (Sanh. 8:4), but it was not necessary that father and mother should be validly married to each other (Sanh. 71a).

There is no record of a rebellious son ever having been executed, except for a dictum of R. Jonathan stating that he had once seen such a one and sat on his grave (Sanh. 71a).

However, it is an old and probably valid tradition that there never had been, nor ever will be, a rebellious son, and that the law had been pronounced for educational and deterrent purposes only, so that parents be rewarded for bringing their children up properly (*ibid.*; Tosef. Sanh. 11:6).