

דבר אחר | A Different Perspective

A New Rabbi in 17th-Century Italy

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Reminded that he will not be permitted to lead the people into the Land of Israel, Moses asks God to appoint a successor for him. God instructs Moses:

Single out Joshua son of Nun, an inspired man, and lay your hand upon him. Have him stand before Eleazar the priest and before the whole community, and commission him in their sight. Invest him with some of your authority, so that the whole Israelite community may obey. (Num. 27:18–20)



Rabbinic Ordination Granted to Judah ben Eliezer Briel. (Venice, 1677) B (NS) PP489

motifs can be found in the Jewish marriage contracts and Esther scrolls produced at this time—but on a *semikhah* certificate this ornamentation is exceptional.

Rabbi Briel went on to become the chief rabbi of Mantua, and he is also a witness on a *ketubah* in the JTS Library’s collection, which features unusual imagery.

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Parashat Pinehas 5776

פרשת פינחס תשע"ו



Law as Response to Its Context

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What social and economic criteria demand a reevaluation—or perhaps even redefinition—of divine law? How does Jewish legal development through the ages illustrate the interrelationship between God and the Jewish people that results in new and relevant Jewish laws? The analysis of one element in parashat Pinehas—inheritance by daughters—teaches that, at times, the Jewish people’s response to the divine call may be determined by the social and economic contexts, resulting in a reframing of the divine message for a new age.

Biblical law allows for inheritance only among males in the paternal line. If a man dies without sons, inheritance is via endogamy: daughters without brothers marry family or tribe members; the daughters thus serve as conduits for transferring their father’s property to eventual sons (the grandsons of the deceased). Significantly, though, by the time of the earliest rabbinic laws of inheritance—preserved in the Mishnah and related collections—endogamy disappears and daughters without brothers inherits directly! Furthermore, the Rabbis introduce maintenance and dowry for daughters from the deceased father’s estate.

What causes this shift? What criteria support a legal change of this magnitude? The early Rabbis may have formulated inheritance laws specific to their time and place. While biblical law presumes a rural context with extended family landholdings and a head of household presiding, tannaitic (Mishnah-era) law was formulated in the context of nuclear families residing on private land in urban centers.

The primary biblical texts on inheritance by daughters appear in two separate accounts. Chapter 27 of Numbers, in this week’s parashah, tells the story of Zelophehad’s daughters: They fear their father’s name will be cut off because, without sons, there is no one to inherit his land and perpetuate the family name. Moses brings the daughters’ query to God, who rules that “you should give them a hereditary holding among their father’s kinsmen; transfer (*veha’avarta*) their father’s share to them” (27:7). The scene ends with this statement: “If a man dies without leaving a son, you shall transfer (*veha’avartem*) his property to his daughter” (27:8).

In chapter 36, the heads of the tribe of Manasseh (Zelophehad's tribe) complain that if Zelophehad's daughters marry outside the tribe, land will pass to their husbands' tribes, diminishing the land portions in Israel that are allotted to Manasseh. Accordingly, daughters must marry men from their father's tribe, thereby resolving the potential problem of the tribe losing landholdings.

Scholars discuss the differences between the two accounts. Some say that in chapter 27, Zelophehad's daughters are entitled to inheritance (since there are no sons) and to marry anyone they want; chapter 36 limits the marriages to fellow tribe members so as to not lose landholdings. Jacob Milgrom, in his *JPS Torah Commentary* on Numbers, argues that in chapter 27 daughters do not inherit—that is, actually own land with the right to sell or gift it (at least until the Jubilee year). Daughters never own land, he says; in the absence of sons, inheritance transfers to the temporary stewardship of the daughters for the purpose of passing to their sons, the grandsons of the deceased, without detriment to the grandfather's legacy. These grandsons, despite their father's family affiliation, preserve Zelophehad's name. The daughters merely serve as trustees, therefore, for their father's land, not as heiresses with ownership. Chapter 36 only adds, says Milgrom, that the concern is transferring property to another tribe.

Milgrom's reading accounts for all of the elements in chapter 27. Zelophehad's daughters request land to *preserve their father's name*, accomplished by having landholdings transferred to them and then passed on to grandsons. Milgrom's interpretation also accounts for the legal significance of the verb ע-ב-ר (*a-v-r*, "to pass or transfer") when referring to the daughters' receipt of land. *A-v-r* possibly connotes the daughters' eventual *passing* of the property to their sons. The legal distinction between chapters, therefore, is not whether in 27 daughters inherit directly while in 36 they do not. The difference is in narrative framing. Both accounts presume the same social background.

In tannaitic law, not only does tribal endogamy entirely disappear, daughters in the absence of sons inherit directly; they own the property and can sell or gift it. The Rabbis also introduce maintenance and dowry for daughters from the father's estate.

The introduction of these new laws may be the product of a protracted process of adaptation to the conditions experienced by the Rabbis: nuclear families residing on private land in urban centers. In the context of the extended family, the earlier biblical laws protect a daughter without a male provider by handing her marketable assets—landholdings—that assist her in securing provision and protection through marriage; in contrast, rabbinic laws add actual ownership of property and, due to this ownership, some amount of protection and position for a daughter. Significantly, tannaitic legislation even surpassed Roman regulation. In early Roman law, a woman in a standard "*cum manu*" marriage did not own her own property; even property she owned prior to the marriage passed to her husband.

Certainly the prevalence of the nuclear family and privatized landholdings in urban centers could bring with it a concern for the welfare of daughters as individuals in need of economic security. Even with the advances in rabbinic law, however, some contemporary readers may still argue that the Rabbis fell short by not granting daughters full rights of succession along with sons.

The academic study of Talmudic texts further enriches and enlightens our complex understanding of the rabbinic law. One tannaitic tradition deserves particular attention: its analysis unveils an approach promoting equal inheritance by daughters *even in the presence of sons!* Mishnah Baba Batra 8:4 states:

- I. The son and the daughter are the same regarding inheritance
 - II. except that [*ela she-*] the [firstborn] son takes a double portion of the father's property but does not take a double portion of the mother's property,
 - III. and the daughters receive maintenance from the father's property and do not receive maintenance from the mother's property.

Clause I, read in isolation, makes a striking statement: "The son and the daughter are the same regarding inheritance"—that is, when the heirs include sons and daughters, they inherit equally! And even though the impression from clauses II–III is that these are a qualification of clause I, a textual problem exists. There is a lack of agreement between the contents of clause I (the ability of a *son and a daughter* to inherit) and the subject matter of clauses II–III (rules governing the difference between allocations from the *father's estate versus the mother's estate*). This intimates that the two sections, clause I and clauses II–III, were originally two separate sources and were brought together here and linked by the phrase *ela she-*.

On additional textual grounds that I develop in my recent book, *From Mesopotamia to the Mishnah: Tannaitic Inheritance Law in Its Legal and Social Contexts*, I suggest that clause I—which read alone states that a son and a daughter inherit equally—is, in fact, originally an independent rabbinic tradition. Silenced though it was, there were some Sages, somewhere, who held steadfast to the position that daughters and sons inherit equally.

If we assume a continuum from biblical Israel to tannaitic Palestine and a relationship between the literatures and social contexts in which they are produced, then we will have documented the restructuring of law in accordance with its context.

With such precedent, the challenge set before us is to have the insight to discern divine will for our own day and to formulate a vision of contemporary Judaism that responds compellingly to our contexts.

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