

Foundations of Hebrew Law

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ABSTRACT: This paper analyzes the biblical episode involving the daughters of the deceased Zelophehad and demonstrates that Hebrew society had the ability to overcome prejudices regarding the primacy of the male sex, even in an eminently patriarchal period. Inheritance is no longer transmitted through the male line and the distinction of sex is eliminated. It must also be recognized that the first important legal disputes in the world appeared in Jewish society long before the codes issued (*ius scriptum*) during the Roman Empire. They indicate the effervescence of disputes in Jewish legal life. Finally, the Zelophehad episode raises questions about the inspiration and authorship of the biblical text. The ability of the human receiver to perceive and modulate the divine message is accidentally called into question. The study considers societal norms, legal consequences, and ethical aspects involving the daughters' request for inheritance, offering reflections on the evolving nature of laws and the attitudes of society in Hebrew culture.

KEYWORDS. Zelophehad's daughters, inheritance, legislation, property, common law, subjective law

Introduction: Legal Disputes in Ancient Jewish Society

The borders of the promised Canaan were already visible in the distance. The preliminary and necessary stages for taking possession of the promised inheritance had begun. The various tribes were already flocking to Moses' tent with specific requests regarding the delimitation of the territories not yet taken over, but which had become certain promises. It was the technical stage of taking over Canaan. Some tribes were trying to get ahead of the other tribes and probably their most skilled negotiators were mobilized for this endeavor. Well-argued requests were made to support their position, and the main motivation remained the economic one: we have more cattle, we are more numerous so the contribution to the state's gross domestic product (we would say today) was more dependent on them. Invoking these pecuniary reasonings, the lands of the land of Galaad are assigned "to the Gadites, the Reubenites, and half-tribe of Manasseh, son of Joseph," the tribes who are declared winners only after complying with the firm promise that they will participate in the entire military campaign to inherit the promised land (Numbers 27:18,27,32; Numbers 32:33). After this additional attribution, it is worth noting that the inheritance no longer extended only stretched "other side of the Jordan" but also "on the east side of the Jordan" (Numbers 32:19).

Days passed and probably various other administrative requests were submitted to Moses. One day, however, a delegation with an unnatural composition was moving preoccupied through the dust of the road, on the central alley of the settlement, leaving it to be understood that it would only stop by its main tent - a tent probably more arranged - a little bigger which had the shelters nearby that seemed to belong to close collaborators. The five women, probably all neatly dressed, walked hard, chilled but with the belief that what they were asking for was right. They seemed determined like when you have a goal to reach. With a tenacity of life that only the prospect of poverty can give you. This squeezed them from behind and joining the belief that they had right mobilized them additionally. They were going for a 21st century approach made in the 10th century before the birth of the Savior.

Although the speech had been rehearsed, commented on, and analyzed, surely the fears had not disappeared, and the words had been carefully chosen according to the culture of which they were a part. They were not to offend anyone or any religious custom. The exposure had to be considered neither aggressive but not too submissive, nor threatening but not banal – essentially, speech like what today we would call politically correct. The question was how to begin this speech, what should be the opening keyword that would draw attention to it, what should be the subsequent sequence of ideas. And of course, the five women had prayed because they realized that their request could be challenged, risking being considered reckless. The girls were taking a daring and, at the same time, dangerous step.

In conceiving the speech, the message bearers legitimized themselves as coming from a serious family, without controversial histories or objectionable accents (Numbers 27:3). The second direction of speech pursued the idea that their initiative was mainly about honoring the deceased parent's name. The third part of the presentation covered the idea that not receiving inheritance would be a denigration of the bright memory of their honorable ancestry (Numbers 27:4). After going through these stages, the speech was approaching its climax: the final theme, the request. Unusual for that time. We want to take over the inheritance share of our father, who had no sons. Like a cry for help! We must survive decently and not take away our means of livelihood in the name of patriarchy or a so-called law of inheritance already issued but which we judge to be incorrect. We want to survive, and above all, we want to live decently, not out of pity! The core of the request thus also became a call to propriety. The expressed desire practically drew attention to the administrative limits of the Talmudic system and was essentially revolutionary. She elegantly stated that the given law was not very good because it condemned them to go down the social ladder. In addition, it contradicted a customarily established rule, namely that succession only through the male line. And he practically demanded equality between the sexes. A male successor is just as important as a female heir as the survival needs are similar and as such the two genders should be treated similarly. Sex is not a reason to make differences between people, says the subtext. And I remind you that everything was happening at the end of the second millennium before Christ in the Iron Age. And this positioning in time only emphasizes once more the courage of the five girls as well as their logic, which far exceeded that of their fellow citizens.

Moses himself is troubled by the girls' request and rushes to bring her before God immediately. He warns his democratic streak that there is something special about this request (Numbers 27:5). The case is therefore presented to the Creator and the action of the five is appreciated by God: "What Zelophehad's daughters are saying is right!" (Numbers 27:7). Although he was questioning the very roots of the inheritance system communicated by Moses, which Moses claimed to have received from God directly (Numbers 36:2), the girls win the case in the heavenly tribunal, the absolute supreme court. And Moses does not cling to what he had previously issued. Although it could have been subjective, Moses, "the meekest man on the face of the earth," gives up his pride and legislates in the interest of the people he led (Numbers 12:3) Apparently great courage to challenge Moses as the five heiresses! And yet.

The Legacy of Zelophehad's Daughters in Harmonizing Faith and Law, and Social Transformation

If we were to update the situation described above, we would understand that what is being exposed is actually an updating of the recent law issued by Moses regarding inheritance, an improvement made, ironically, by the very one who issued the legislation in question. Nowadays what is said here appears as an emergency ordinance amending the law issued and published only a short time

ago in the hypothetical government daily. A kind of decree law that aligns the legal provisions with a new vision that considers the additional case not taken into account when issuing the primary, initial legislation. Specifically, an improvement to the law of inheritance that arose out of a principled request made by a small group of people, the five women, who normally, in the patriarchal culture, had no right to bring amendments.

For those most familiar with the administrative system, we must admit that the approach remains a particularly bold one even today. The major surprise is to find that in Israel at the time of Moses this was perfectly possible!!! And especially as in the Israel of Moses there was real equality between the sexes which was recognized by the highest authorities of the state and validated by the supreme god whom Israel worshiped, God (Rotaru 2014, 219). Without being able to appreciate the depth of women's personal freedom, we can highlight without any possibility of denial that, in the social life of the people, women had a point of view that could be listened to if it was argued seriously and that the status of women in Jewish society was by no means minor.

The result of the appeal filed by the five women is immeasurably negligible. He pushes the boundaries of Hebrew society far beyond what was acceptable in those days. "Give them an inheritance among their father's brothers and pass on to them their father's inheritance" (Numbers 27:7). That is inheritance for women in an eminently patriarchal society!!! So, the legislation on inheritance undergoes a first metamorphosis. It changes since the time of the one who issued it. And the novelty brought by this change was actually that the inheritance did not necessarily have to be transmitted through the male line. And women get their deserved social value, this value is recognized, and the subsequent jurisprudence had to be modified in this sense. And the situation of Zelophehad's girls does not seem to be singular. If we remember Deborah, a prophetess in Israel (Judges 4:4) a few ages after the aforementioned event, we realize that the status of women was important.

But the biblical account also has a rather spectacular sequel that partially reverses the benefits obtained by the change favorable to single women. At first glance, it all seems like a male affair with misogynistic overtones. The succession of this idea only shows the contortion of Hebrew society over time. Seeing that Zelophehad's daughters receive their father's inheritance, the elders of the tribe from which the deceased came, the tribe of Joseph, begin to do some calculations. How much they lose, when and how much they win. And he identifies a potential damage, in the situation where the five new owners marry into other tribes. The mosaic text presents everything in a slightly sexist penumbra.

The elders of the tribe, the men go to clarify what gives the impression that it is a non-specific evolution at odds with a linear social evolution. In the mentality of the time it was a man's business! It is worth noting, however, that they do not challenge the amended jurisdiction, do not appreciate that it is incorrect, that it gives rights to a category that should not have rights (once again the deeply democratic situation of the society is observed) but they warn about possible financial losses of the group, of the community, the tribe in the event of unforeseen situations.

So it is that mobilized by the issuing of improvements to the legislation of inheritances, the tribes in general and those from which Zelophehad was claimed, Manasseh in particular, thought it necessary to request a new modification more in line with the economic reality of the day. Those who came out to the ramp were therefore the elders from the tribe, those directly interested. The heads of the families in turn prepared a charming speech, juridically and economically justified, but starting from the economic value of the land. The beginning is sweet for Moses "The Lord commanded you to give Israel the land as an inheritance by lot" (Numbers 36:2). The reality that had practically undergone changes was a little different. The tribes of Reuben, Gad and half of the tribe of Manasseh (exactly the tribe of the challengers!!), had received the inheritance on request,

through direct negotiation and not by lot (Numbers 26:55). But this discussion suggests another direction that can be discussed in a separate material.

Returning to the case above, their request started from a simple premise but with an intrinsically important truth: the property of a member of the tribe belongs to the common property (*dominium ex Jure Quiritium*”, versus „*rem in bonis habere*” Sămbrian 2001, 137) of the tribe above all, or more precisely, access to it can be restricted if the superior common interest of the group ask. If the five girls will marry into another tribe, the tribe of Manasseh will lose economically because the lands "will be added to the tribes to which the girls joined by marriage" (Numbers 36:4) so the requirement of the elders of the house is precisely the issuance of a somewhat restrictive law that could limit the unlimited access to a subjective personal good. That is, the individual right established by the new legislation of Moses had to be limited. It could not be applied independently because "the inheritance that fell to our lot will diminish" (Numbers 36:3).

And so, the requirement arises: to pass a law disinheriting the amateurs from marriage but with their brothers from other tribes. For single and heiress women the choice became relatively simple: total economic freedom was limited by marriage into another tribe because together the two variants could not coexist. In a short time, the legislation made a spectacular volute. The right to property is subordinated to the general right. Moses "commands ... from the Lord", with promptness, which was probably in agreement with his own mentality. The biblical report therefore no longer records that Moses went to present the matter before God. but only that "Moses commanded ... from the Lord" (Numbers 36:5-8). Which gives a certain impetuosity and safety. And above all, it throws into the public space a discussion that legal theorists have not resolved even today: how far a subjective right (Stoica 2021,53) can extend and what is the moment when it can be restricted in the name of a higher interest common to the entire population.

How else could a command be obeyed at that time? With regret (do we?) We observe how it has returned from a law more in line with the social developments of our age to a law that is limited to the level of the century in which it was issued but also to the subsequent interpretations developed by the entire science of law. The mentality of the time added a potential legal edge to Hebrew law that is not fully clarified even today. The priority of the general interest compared to the private one, the primacy of the collective over a private right. Many years later, the Romanian society separates from the right of common property to that of individual property in the law of the XII Tables, the first written code of Roman laws *ius scriptum* - DVODECIM TABVLAE (Cocoş 1998, 14; Wikipedia 2024; Aurel 2015, 73). Only then, around 450 BC, 800 years later, the conflict between "*dominium ex jure Quiritium*" and "*rem in bonis habere*" (Sămbrian 2001,137) appears written in the Roman code as the incomplete form of property (possession from Quiritian law and to have a thing in goods) (*dominion from the Quiritian law* and *having a thing in goods*), between *dominium utile* and *dominium eminens* (useful domain and issuing dominion).

The demands of Zelophehad's daughters were maximum. They wanted both the legal possession of the land and the legitimate capacity in the deeds of retention, regarding their own right over the land (Negrilă 2018, 125-132; Boroï et al. 2013,15) (the main good of an agrarian society) - the right of ownership - *dominium*, to use the Roman terms introduced and consecrated in millennial history to the right for such of goods (the right to property Quiritian law was reserved for Roman citizens - *quiritis* and is therefore known as "Quiritian" law. The right of ownership (*dominium*) for such goods was reserved for Roman citizens. *Quiritis* and hence called "quiritian" or "quiritary" right. By this name it will be known later even though it is now evident that those who mark the first in the dispute between the right of personal property and those of the common right is the Jewish people.

The social and administrative effervescence of ancient Hebrew life "stuck" in legal history a dilemma whose solution is still sought. Collective common law and its limitations on personal law generate a conflict that imposed an apparently arbitrary prioritization between the two categories of law but absolutely necessary. Zelopheha's girls and their demands were part of the problem. On the other hand, the demands of the elders of Manasseh to restrict this personal right according to the general interest, to interpret it by referring to the interest of the group meant the initiation of legal disputes that are not fully clarified even today. The right to property, a civil right, can only be exercised in accordance with its economic or social purpose and international legislation, with few exceptions (Mirow 2023) has provisions on this topic. This right should not be perceived only in the interest of the owner because the common interest can also have a restrictive function when appropriate.

Fortunately for the tension of the biblical text, the incident ends with a happy ending. "Mahlah, Tirzah, Hoglah, Milkah and Noah, the girls of Zelophehad, were married after the sons of their uncle" and the wealth of Joseph's family was not affected (Numbers 36:11). The case seems apparently solved, although in reality a legal page has been opened that the entire tomes written on this topic could not solve. And the questions of depth have remained as current, imposing on us the obligation to find an answer to them.

The girls of Zelophehad understood then, perhaps also under the pressure of the customs of the time, what is the difference between "God said" and "commanded from the Lord", how to quantify the difference between being the transmitter of God's ideas, the carrier of His voice, and the transmitter of one's own ideas. They make the difference between emotional and practical problems (Waters 2003, 48). How moderating can be man's intervention on the sacred text. They discovered the correct response that guided their subsequent behavior to successfully modulate the effects of their action. They found the courage to challenge the religious trappings of the moment and assumed a vindictive attitude towards what even our contemporaries would consider requiring a holy fear that would not tempt God. There are believers today who would consider a withdrawn attitude appropriate, with losses just so as not to assume another attitude that may or may not seem "according to the Lord's will" (2 Cor 7:10). A holy humility that censures them and that although they are not comfortable with it, they accept it. The example of the daughters of Zelophehad is exactly the opposite and can hardly be accepted in its depth (Rotaru 2021a, 87-92; Rotaru 2021b, 190-196).

Conclusion

After this fabulous social itinerary, with multiple legal and administrative implications, it is worth asking if God was wrong when he gave the first, second or third inheritance legislation. Or if only Moses was issuing legislation according to his understanding, his cultural capacity, or just according to his training. The event described at the same time raises questions of religious ethics but also of the authorship of the biblical text and also of man's shaping intervention on the sacred. Is the legislation issued in Moses' time his own, is it inspired by God, or is it an expression of God? Was the Old Testament legislation in line with the developing mentalities of the time or did it fully represent the expression of the Godhead? What sacred value does it have, or is its value only administrative? Is Mosaic legislation given or merely accepted? Can the two visions with moral valences be demarcated with surgical precision? They are all a bundle of questions with deep implications which, depending on their answer, give the measure of the interpretation of the biblical text and the way of treating it with decency or with boldness.

Although the jurisprudence of the time is supplemented by a superior provision that far exceeded the limits of the age at that time (legislation on inheritance that ignored the differences

generated by the different sex of legal subjects - persons), the subsequent amplification of the biblical narrative reveals that the human receiver was not only unprepared to overcome their condition and their own mentalities but also that they limit God by widowing Him(us) from amazing experiences. And yet the debates generated by the requests of Zelophehad 's daughters generated legal positions that stand to this day. One thing is certain, God does not need corruptible lawyers (Job 42:8. u.p.) (Rotaru 2016, 29-43) and this truth remains a constant of His attitude. You are calmer if you ask for explanations (Habakkuk 2:1), if you ask for answers than to be left with frustrations that will erupt periodically tormenting your life (Malachi 3:14).

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