The Land Rights of Women in Deuteronomy

An important function of levirate marriage -- requiring women without husbands or heirs to delegate their land rights to guardians – is to protect the rights of elite males by limiting the number of women exercising their land rights independently. Therefore, the primary intention of Instructions on Widows (Deut 25:5-10) is not to provide widows with children, but to put their land back into production.

See Also: *The Social World of Deuteronomy: A New Feminist Commentary* (Cascade Books, 2015).

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INTRODUCTION

Land Rights of Women in Deuteronomy continues work in my *Social World of Deuteronomy: a new feminist commentary*. My still probable, but not clearly proven, thesis is that fathers designated heirs to their land rights. To exercise their rights heirs were required to marry women whom YHWH and their tribes or states recognized as holding legal title to those rights.

Recently, Steve Wiggins invited me to edit the *Oxford University Press Handbook of Deuteronomy.* The handbook contains thirty-some chapters by scholars from Europe and the Americas. This article models the format for that handbook explaining where the conversation began, where is that conversation today, and what is trending.

PART ONE

Who Began the Conversation?

LAND RIGHTS IN EARLY HUMAN COMMUNITIES

In his *Discourse on the Origins of Inequality and Social Contract* (1754) Jean-Jacques Rousseau (1712-1778) started a conversation on the characteristics of early human communities. For Rousseau early humans possessed a natural goodness uncorrupted by competition. I assume that there was no competition in early human communities because humans had responsibility to care for the land, but no rights to the land

LAND RIGHTS IN EARLY ISRAEL

In *Tribes of Yahweh: A Sociology of the Religion of Liberated Israel, 1250-1050 BCE* (1979) Norman K. Gottwald reconstructed the social world of early Israel as an egalitarian village culture similar to the communities envisioned by Rousseau. Although he did not address land rights of women, his model --borrowed from Karl Marx (1818-1883) -- did. I assume that the battle cry *Only YHWH* (Deut 6:4) limited all land rights to YHWH. There were to be no land rights, no monarchs, no taxes, no soldiers, no cities and no destructive competition in early Israel.

LAND RIGHTS IN DEUTERONOMY

In *Deuteronomy and the Deuteronomic School* (1972), Moshe Weinfeld (1925-2009) applied assumptions similar to those of Rousseau to Deuteronomy. Because Deuteronomy contained traditions on interest free loans (Deut 23:19–20; 24:17–18), feeding travelers and widows (Deut 23:24–25; 24:19–22) and charitable giving (Deut 26:1–15), it was not a legal code, but a teaching tradition encouraging a humanitarian lifestyle parallel to the *Teachings of Amen-em-ope* in Egypt, the *Teachings of Ahiqar* in Mesopotamia, or Proverbs in Israel.

LAND RIGHTS AS A COVENANT BLESSING

In his *Problem of the Hexateuch* (1966) Gerhard von Rad (1901-1971) demonstrated the importance of land in the *Covenant between YHWH and Israel* (Deut 4:44—31:29). He

assumed that the Yahwist traditions (J) were a theology based on land rights in a profession of faith which acknowledges that YHWH had taken their households from a subsistence economy where they were starving, to a surplus economy where they are fed.

For von Rad the Yahwist traditions reminded the Hebrews: that *…not only had the promise to give Israel the land of Canaan been fulfilled, but that subsequently God visibly continued his providential care for Israel*. Nonetheless, the traditions understood how difficult it was for them to remain faithful to the stipulations associated with their land rights. Therefore, they forfeited their land rights to the Assyrians, Babylonians and Persians.

Until Walter Brueggemann published *The Land*: *Place as Gift, Promise, and Challenge in Biblical Faith* (1977) few scholars had studied YHWH's promise to endow the Hebrews with land. Brueggemann used the sociologies of Peter L. Berger in *The Sacred Canopy: Elements of a Sociological Theory of Religion* (1967) and Lewis Mumford (1895-1990) in *The Condition of Man* (1944) to demonstrate that the focus of biblical theology should not only be on YHWH, or on the people of YHWH, but on YHWH and the people of YHWH *in the land.*

Brueggemann reconstructed three theologies of the land: *en route from the desert to the land* (Gen, Exod, Lev, Num, Deut); *in the land* (Sam-Kgs, Hos, Jer) and *en route from Babylon to the land* (*Holiness Code,* Isa, Jer, Ezek, Ezra-Neh).

PART TWO

What is the Status of the Conversation Today?

WOMEN ACQUIRE LAND USE RIGHTS IN THEIR DOWRIES

Covenants were negotiated primarily for land rights. Ratifying covenants by marriage emphasizes the role of women in conferring land rights on their husbands.

For Naomi Steinberg, in "Romancing the Widow: The Economic Distinctions between the *'Almana*, the *'Issa-'Almana* and the *'Eset-Hammet*" (2004) *...the preferred marriage pattern is between spouses descended from the same patrilineage, with the couple residing patrilocally, and both of them bringing property to the conjugal fund on which the marriage is based.*

A woman who brings property to the marriage… has rights in the marriage which make the marriage more difficult to dissolve, which guarantee her male offspring inheritance rights to their father's estate and which entitle her to be labeled a primary wife. The existence of a bridal dowry guarantees the woman economic rights that protect her against her husband's dissolution of the marriage, particularly when she has borne a male child to her husband. …this dowry may include land (Judg 1:11-15).

Although fathers generally designated male heirs who were their own natural children, they could also designate unmarried daughters -- like the daughters of Zelophehad -- as heirs (Num 27:1-11; 36:2-12; Josh 17:3-6) or males who were only their children by covenant (Gen 15:2). References to designating women as heirs also appear in the *Code of Ur-Nammu and Shulgi* and the *Code of Lipit-Ishtar*.

Women received land rights as dowries (1 Kgs 9:16; Mic 1:14) which they invested in the households of their husbands. The father of Achsah (Josh 15:18-19; Judg 1:13-15), Pharaoh (1 Kgs 9:16), Job and the father of Babatha all explicitly included land rights in the dowries of their daughters.

Exogamous marriages were typical of economically aggressive households. They were financially high-risk, high-return investments. If exogamous marriages succeeded, both households enjoyed significant economic returns. If they failed, the financial loss was substantial.

Endogamous marriages required fathers to choose partners from households with existing economic relationships. Endogamous marriages were financially conservative. The financial risks were small and so were the financial rewards.

Carol L. Meyers in her *Rediscovering Eve: Ancient Israelite Women in Context* (2013) explains the values of insider marriages. *The justification for prohibiting foreign wives in Exodus 34:16 is that it will prevent the worship of foreign gods. This religious reason should be understood in broader terms, with foreign religion standing for the cultural patterns of another people. Endogamous marriages — in which wives shared the same cultures as their husbands — perhaps better served community needs. Such brides would be well versed in the particular social customs and technologies necessary for household life, an important consideration in the precarious environment of the farming communities of the biblical period. Thus, marrying an Israelite woman was a likely a strategy for survival, not an expression of cultural disdain.*

I assume that insider marriages were preferable because insider women had more attractive land rights than outsider women.

Some marriage partners were taboo. Widowed mothers, fathers' wives, sisters, granddaughters, paternal or maternal aunts, daughters-in-law, or sisters-in-law were all taboo (Lev 18:6–18). I assume the taboos prevent women who have already delegated their land rights to one husband, heir or guardian from delegating those same rights to another.

Instructions on Female Prisoners (Deut 21:10–14) teach how to conduct an irreversible ritual of initiation to change the status of female prisoners from outsiders to insiders so that they can delegate the land rights of their households of origin to the Hebrew warriors who have taken them prisoner.

Instructions on Re-marriage (Deut 24:1–4) teach fathers not to acquire land rights more than once from the same woman. Here the first husband divorced his wife for cause and therefore could exercise her land use rights *in perpetuum* as compensation (1 Sam 12:5; 29:3–8; 2 Kgs 17:4). The second husband divorces the same woman without cause, and the woman receives land rights as compensation.

WOMEN WITHOUT HUSBANDS OR HEIRS DELEGATE THEIR LAND RIGHTS TO GUARDIANS

When the fathers died without designating heirs, their tribes appointed *legal guardians* – awkwardly translated *brothers in law* or *redeemers* -- to exercise the land rights of their widows. Some guardians only managed the land; others also fathered heirs with the widows. *Hittite Laws* and *Middle Assyrian Laws* establish parallel, but not identical, instructions for legal guardians.

In *The View of Women found in the Deuteronomic Family Laws* (1993) Carolyn Pressler observes that few traditions describe widows as *childless*, because the defining characteristic of widows is not that they were women without children, but that they were women without husbands, heirs or guardians.

An important function of *levirate marriage* -- requiring women without husbands or heirs to delegate their land rights to guardians – is to protect the rights of elite males by limiting the number of women exercising their land rights independently. Therefore, the primary intention of *Instructions on Widows* (Deut 25:5-10) is not to provide widows with children, but to put their land back into production.

The research of Steinberg on the sixty-some occurrences of the word *widow* demonstrated a clear connection between widows and land rights: *…the common denominator in understanding widowhood in biblical Israel revolved around the existence or absence of ancestral land. …without the inheritance of landed property there is no rationale for a relative*

of the deceased to father a child for the widow. At the time such a child is born, rights to the patrimony of the deceased are vested in the infant heir.

For Steinberg widows, orphans, outsiders and Levites are not related by their gender or their poverty, but by their land rights. ʾIššâ-*ʾalmānâ* widows -- like a woman from Tekoa (2 Sam 14:5), a queen mother from Tyre (1 Kgs 7:14), the mother of Jeroboam (1 Kgs 11:26) and a woman from Zeraphath (1 Kgs 17:8-24) – delegate their land rights to heirs who support them with commissions. *ʾAlmānâ* widows have no land rights and no one to support them (Deut 14:28-29; 24:19-21; 26:12-13). *ʾEset-hammet* widows have land rights, but no heirs, and therefore, like *almana* widows, no one to support them. Their husbands -- like Er, Onan (Gen 38), Elimelech, Mahlon and Chilion (Ruth 1) -- died before fathering heirs.

SOME WOMEN DO NOT DELEGATE THEIR LAND USE RIGHTS TO HUSBANDS, HEIRS OR GUARDIANS

Some elite women had land rights, but did not delegate them to husbands, heirs or guardians. For Paula S. Hiebert in Whence Shall Help Come to Me? *the Biblical Widow* (1989) widows in Mesopotamia could inherit only the land which their fathers included in their dowries.

Naditu women at Nippur also exercised their land rights independently. They could marry, but only after negotiating covenants with surrogate women to bear children for their husbands who could not designate any of these children as heirs to the land rights of their wives. The *Elephantine Letters* also indicate that the wives of the soldiers from Judah stationed on the island could exercise their land rights independently.

Susan Ackerman in *Warrior, Dancer, Seductress, Queen: Women in Judges and Biblical Israel* (1998) assumes *pileges* were either *secondary wives* and *concubines* who provided sexual pleasure for elite males, but had no legal status as wives. I assume that all *pileges* were wives without land rights.

Bernard F. Batto in *Land Tenure and Women at Mari* (1980) demonstrated that elite women at Nuzi and Mari held title to land both independently and with partners. *Within the private sector, evidence for women possessing property in their own name is scanty but not surprising in view of the fact that few documents from the private sector have been found at Mari. No contracts for the sale of land involving women have been preserved. However, there is no reason to believe women did not engage in such activities*…. [Tablet] *VIII 84 contains the judgment of the governor in a case of litigation between a* [husband]… *and a* [wife]. …. *the resolution of the case is enlightening: Dada and Naratum were to divide their community of property…, thus confirming the legal capacity of women to possess property in their own right.*

PART THREE

What is Trending in the Conversation Now?

Some trending interpretations of the land rights of women in Deuteronomy return to models proposed earlier; some challenge long standing traditions of interpretation.

THE SOCIAL WORLD OF DEUTERONOMY IS IDEAL AND EGALITARIAN

Roland Boer, in *The Sacred Economy of Ancient Israel* (2015) revives the assumptions of Rousseau and Gottwald. For Boer ancient Israel is an enduring ideal or *sacred,* subsistence or *allocative,* culture or *economy*. Israel's subsistence economy was resilient and survived repeated exploitation by the surplus, *extractive* or *plunder* cultures of outsiders like the Assyrians, Babylonians and Persians and of insiders like the household of David.

DEUTERONOMY IS A STUDY OF LAW, NOT A CODE OF LAW

The understanding of Deuteronomy as a teaching, rather than a legal genre is a trend reprising both von Rad who considered Deuteronomy to be *parenesis* or *preached law*, and Weinfeld for whom it was more the *Teachings of Moses*, than a *Deuteronomic Code.*

ASSEMBLIES OF WOMEN, RATHER THAN MEN, DEAL WITH LAND RIGHTS

In *Sex, Lies, and Virginal Rape: The Slandered Bride and False Accusation in Deuteronomy* (2005) Bruce Wells -- building on the work of Raymond Westbrook (1946-2009) – analyzes a trial transcript (UET 5) before an assembly of women in the Sumerian city of Nippur. He provides several provocative insights into the social world of Deuteronomy.

The transcript records that during 1737 BCE, the man Enlil-issu and the woman Ama-sukkal negotiated a marriage covenant. After 10 years without consummating their marriage, both filed for divorce. Enlil-issu indicted Ama-sukkal for misrepresenting her eligibility for marriage; she indicted Enlil-issu for slander.

The mothers find Ama-sukkal not-guilty, convict Enlil-issu of slander and sentence him to consummate his marriage. Enlil-issu accepts their verdict, but appeals to the mothers to mitigate his sentence to a fine and jail time.

A common explanation for an assembly of women, rather than men, hearing the case of a slandered bride is that having men conduct physical examinations of defendants to determine if their hymens were intact would be inappropriate. A common interpretation considers indictments of women like Ama-sukkal for losing their virginity to be guilty of sexual promiscuity. I assume that the connotations of *virginity* -- and *adultery* -- have more to do with land rights, than with the sexual rights of their husbands.

Therefore, an assembly of women hears the case because the indictment involves land rights. Since women are responsible for delegating their land rights, they would render a more informed judgement. In a *Story of Boaz as a Legal Guardian* (Ruth 4:1–22) when Boaz wants authorization as the primary legal guardian of Ruth, he goes to an assembly of men (Ruth 4:1–12). When Ruth wants the authorization of their child as heir to household of Elimelech, she goes to an assembly of women (Ruth 4:12–18). The issue is not who fathered the child or who

was the child's legal mother, but rather to delegate the land use rights of Naomi, rather than the land use rights of Ruth, to the biological son of Ruth and Boaz.

HUMANITARIAN BEHAVIOR OF ELITE MALES IN DEUTERONOMY DEFENDS THEIR LAND RIGHTS

Another trend views the humanitarian instructions in Deuteronomy neither as a preferential option for the poor, nor as a challenge by the poor to the land rights of the powerful, but rather as a safeguard for the land rights of the powerful.

Mark Sneed in *Israelite Concern for the Alien, Orphan, and Widow: altruism or ideology?* (1999) proposes that since the ancestors of the elite males were outsiders, Deuteronomy teaches them to be compassionate with outsiders. Likewise, although Deuteronomy sometimes portrays YHWH as threatened, and therefore hostile, to some outsiders like the peoples of Syria-Palestine, Deuteronomy also portrays YHWH as unthreatened, and therefore compassionate with outsiders. Deuteronomy encourages fathers to imitate this YHWH.

In *Law, Power, and Justice in Ancient Israel* (2011) Douglas A. Knight argues that humanitarian traditions actually teach fathers how to manipulate the powerless. Promising them imminent, but never realized, relief allowed fathers to continue to oppress the powerless without fearing revolt.

For Ronald Simkins in *The Widow and Orphan in the Political Economy of Ancient Israel* (2014) humanitarian traditions reinforce the social institutions which create privilege for the powerful and suffering for the powerless. Their intention was not compassion, but social stability. The research of James W. Flanagan (1935-2015) draws similar conclusions.

Flanagan published his study of the *Stories of David's Rise to Power* (1 Sam 16:14—2 Sam 5:10) as *David's Social Drama: a hologram of Israel's early Iron Age* (1988) using *Arabia Unified: a portrait of Ibn Saud* (1980) by Mohammed Almana as an ethnography. He argued that

the unification of Arabia by Ibn Saud (1910-1988) and the unification of the villages of early Israel by David followed the same sociological pattern.

For example, David sat at the gate and Ibn Saud sat in *majlis* to hear petitions from their people. Resolving random conflicts between households offered hope to the powerless, and prevented any unified threat by them to the land rights of the powerful.

I assume that although in the Israel and Judah where Deuteronomy developed, there were land rights, Deuteronomy identifies those without land rights in this new world order as representatives of the visions of those first Hebrews to whom YHWH promised land.

YHWH, LEADERS, WOMEN AND MEN ALL HOLD DIFFERENT RIGHTS TO THE SAME LAND

W.F. Leemans (1927-1989) in *The Old-Babylonian merchant; his business and his social position* (1950), Maria deJong Ellis in *Agriculture and the State in Ancient Mesopotamia* (1976) and Batto all studied the land rights of elite males. Their shared assumption was that only one elite male held rights to each tract of land. Now in *Hierarchy of Estates in Land and Naboth's Vineyard* (2014) Stephen C. Russell uses the research of Bronislaw Malinkowski (1884-1942) to argue that different elites had different rights to the same tract of land. Some are owners, some administrators and some users. I assume that YHWH held *ownership rights* to all land. Tribal leaders and state rulers had *administrative rights* to protect land from misuse. Women held *land use rights* which they could either delegate to husbands, heirs and guardians, or exercise independently.

HONOR IN DEUTERONOMY -- A COMMISSION PAID TO PROTECT LAND RIGHTS

Land rights remained in effect only as long as clients *honored* their patrons. *Honor your father and mother* (Deut 5:7-21) teaches not only that both parents deserve verbal courtesy, but also that heirs pay commissions to both the men who designated them heirs, and the women who delegated them to exercise their land rights.

Similarly, *Instructions on Foraging* (Deut 23:24–25) teach fathers to honor travelers who gather food from their fields; *Instructions on Gleaning* (Deut 24:19–21) to honor widows who harvest their grain; *Instructions on Tithing* (Deut 14:22-29) to honor outsiders, Levites, widows and orphans with 10% of their herds and harvests every third year. *Honor* was not charity but a commission on land use rights.

Elite males generally delegated other powerful males -- like Sennacherib delegated his *rabshakeh* (2 Kgs 18:27–37) -- to collect commissions. Curiously, YHWH delegates powerless travelers, widows, orphans, Levites and outsiders to collect commissions.

In the *Stories of Jacob, Leah and Rachel* (Gen 27:1-40) Isaac designates Esau as his heir and tells him to honor him with a meal. Rebekah here is not a woman smitten by love for her youngest child, but a land manager who astutely delegates her rights to her most competent son by helping Jacob honor Isaac more generously than Esau.

Heirs also honored mothers and fathers by caring for the land where they were buried and by celebrating *kispum* meals. They also channeled fathers and mothers to seek their advice. Saul meets a shaman from Endor at the tomb of Samuel for whom she prepares an exquisite *kispum* meal to seek his advice (1 Sam 28:3–25). *Instructions on Prophets* (Deut 18:9–22) do not outlaw honoring mothers and fathers who have died, but only trying to manipulate them into revealing or changing YHWH's plans (Lev 19:26—20:27).

Land rights could be legally reversed. In *Instructions on Terminating Heirs* (Deut 21:18–21) *son* refers to an adult heir, not a minor child. *Gluttony and drunkenness* are adult behaviors. *Stubborn and rebellious* heirs put their limited land resources at risk by over-indulgence.

Fathers and mothers can initiate a cause of action when heirs fail to honor them, but must first have delinquent heirs flogged. Similarly, the *Code of Hammurabi* (arts 168-169) requires

fathers to arraign heirs for one serious offense before they can terminate them. If heirs still refuse to pay commissions, fathers and mothers have them arrested, arraigned for trial and then testify against them. Fathers must rescind their ratification of the delinquents as heirs, and mothers their confirmation.

Finally, *Instructions on Terminating Legal Guardians* (Deut 25:1-10) teach widows to remove the sandals of guardians who fail to father a child with them, and then spit on them symbolizing *coitus interruptus*. The foot is a penis, the sandal a vagina (Exod 4:25, Isa 6:2; 7:20) and saliva is sperm. The ritual cursed guardians with the same infertility that they had imposed upon widows.