

IS INCEST WITH A DAUGHTER PERMISSIBLE?

BENJAMIN GOODNICK

The title of this article sounds like an absurd question, which was answered ages ago. Yet, not so. In her recent book¹ author Sophie Lafont states: "*Force est donc de conclure que l'Ancien Testament ne condamne pas l'incest paternel* [We must then conclude that the Old Testament does not expressly condemn paternal incest]" [my translation – BG].

Such a statement can be shocking to us, yet so this author asserts. What is the basis of her argument? In Leviticus 17:6ff. we read of numerous forbidden sexual relationships but, surprisingly, there is no mention of a daughter. How do we account for this omission?

Maimonides² actually lists as negative commandment No. 336 that incest with a daughter is forbidden. Here he follows the reasoning of the Talmud (in Yevamot and Keritot) that we learn this prohibition through a *gezerah shavah* [a similar expression]. In other words, this prohibition was established by rabbinic ordinance.³

To evaluate this omission, let us note that similar unexpected omissions are found elsewhere in the Torah. Thus, in Leviticus 21:1-3 we find that the ordinary priest may – some rabbis say must – defile himself with the bodies of close relatives, specifically father, mother, son, daughter, brother and sister. Yet, the wife is not mentioned. Again, absence of mention of defilement for a wife is rectified by a rabbinic ordinance.

A most obvious example of an omission is found in the Fourth Commandment, well known to both Jews and non-Jews alike. It states that all manner of work is forbidden on the Sabbath to all categories of human and animal life:

But the seventh day [of the week] is a Sabbath [a day of rest] of the Lord your God; you shall not do any work – you, your son or your daughter, your male or female slave, your ox or your ass, or any of your cattle, or the stranger in your settlements (Ex. 20:8; Deut. 5:14).

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Yet, it is surprising that for this most stringent commandment, within this detailed enumeration, the wife is not thought worthy of mention. Furthermore, it does not appear that Maimonides makes any comment regarding this omission. We can acknowledge that once again the wife was only included in this basic prohibition through a rabbinic ordinance.

It is quite possible that other instances of similar omissions could be discovered. The rabbinic approach to clarifying these matters is based on common sense, while it embodies legal terminology. Thus, if incest with a granddaughter, a relative farther removed, is specifically forbidden, then obviously incest with a daughter, a closer relative, would be forbidden. Likewise, if it is forbidden for a stranger or an ox to work on the Sabbath, certainly it would be forbidden for a wife.

Similarly, if an ordinary priest (not the high priest) is to attend to the burial needs of those close to him, certainly his deceased wife, his closest companion of many years, living in the same household and bound to him in so many ways, has an even higher claim for his attention to her final needs.

After these evident and reasonable explanations, the question still remains: Why were these two individuals – daughter and wife – omitted from the listings? To my mind, the apparent cause for omission is the very closeness of the relationship, closer than that to any other related persons. Therefore, no need was felt to name them. Indeed, it would seem that the laws in which these two were here involved were observed from time immemorial. Namely, the taboo against incest with one's own daughter, and the husband's preparation for the burial of his wife. As to not working on the Sabbath, since the wife and husband occupy one household, they would necessarily follow one practice.

Now, having said the above, is it possible to find novel, perhaps basic, yet acceptable responses to account for the discussed omissions? Let us start with the omission of the wife among the close relations. We note that in Genesis, the Torah conceives of and emphasizes the vital bond between man and woman, between husband and wife: Hence a man leaves his father and mother and clings to his wife, so they become one flesh (2:24). We can readily look upon the omissions of the wife in regard to the commandments mentioned above as simply extensions or aspects of this view expressed in Genesis.

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As to the omission of the daughter in respect to incest, another approach may clarify. We are all aware that the biblical expression for descendants is "seed." This expression is always attached to the male. It is recognized that the ancients had no awareness of the true nature of heredity. In fact, the female contribution to heredity was not discovered until the middle of the Nineteenth Century, just a brief 150 years ago. The ancients compared human and animal birth to the process of plant growth in which seeds are placed into the ground where they establish roots and then come forth above the ground and continue to be nourished by "Mother Earth." So, too, the woman. She was impregnated with the man's seed and provided nourishment to the fetus within her body and after birth to the infant.

From this standpoint, the father was the sole source of the heredity of his children. Thus, his daughter was actually his closest female relative and directly taboo, forbidden to her father; so there was no need for further explanation. Other female relatives were seen as more distant. A granddaughter, for example, was viewed as more removed (a generation away), so the text had to state that she is likewise a close relative.

To return to the original question: It appears that incest with a daughter was forbidden from the earliest days and therefore not a subject open for discussion. Indeed, evidence for this conclusion is found in the Torah itself and precisely illustrated by the incident of Lot and his two daughters (Gen. 19:30-38). The young maidens, just escaped from Sodom and viewing the total destruction of their city and its inhabitants, are very fearful of remaining childless. They devise a plan to get their father intoxicated, so at night they can lie down beside him and be impregnated by him. It is significant that the text states, referring to each daughter, that *he did not know when she lay down or when she rose* (19:35-36). Obviously, had incest with a daughter been normative and permissible, this deception would hardly have been necessary.

It would appear, then, that the need for the rabbinic ordinances in these instances is essential, since Jewish law is based on accepted legislation; that is, laws specifically stated in the Torah and those promulgated by rabbinical decree. Thus, for legal purposes, common sense and common knowledge do not suffice despite their evident applicability.

As to the thesis of Sophie Lafont, while the writer may be a scholar well acquainted with the past cultures, she seems, like many scholars, to focus on details and be oblivious to or ignorant of the broader picture. Nor is she

knowledgeable about the over-all Torah approach. Her remarks may not have malicious intent, but unfortunately such learned views that denigrate the Torah – and, consequently, Judaism – continue to be expressed and apparently widely disseminated.

NOTES

1. S. Lafont, *Femmes, Droit et Justice dans l'Antiquité orientale. Contribution à l'étude du droit pénal au Proche-Orient ancien*. (Orbis Biblicus et Orientalis). (Fribourg: Editions Universitaires, 1999), p. 165
2. *The Commandments*, trans. Dr. Charles B. Chavel (New York/London: The Soncino Press Ltd, 1967).
3. In view of the fact that the law forbidding incest with a daughter is derived from the biblically expressed law forbidding incest with a granddaughter it is difficult to understand why it is based on a *gezeh shavah* rather than a *kal v'homer* [*a fortiori*].

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