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Love versus Law

Romeo and Juliet—starcrossed lovers whose relationship is forbidden—is a classic trope, a familiar theme. It's replayed in everything from West Side Story to Israeli author Dorit Rabinyan's *All the Rivers*, a novel banned recently by the Israeli Education Ministry because it describes a relationship between an Israeli Jew and Palestinian Muslim.

We are still in the midst of a millennia-long struggle for people to be able to love and marry whomever they want. Love that crosses boundaries has often been forbidden, whether those boundaries are class, race, religion, nationality, age, or gender expectations.

One small instance of boundary-creating happens in this week's Torah portion, the prohibition on a priest, a כהן, marrying a divorcee. I want to talk about this today for two reasons. First, I was recently asked a question about this, and thought the answer would be interesting for a larger audience. Second, the story here, especially the way the Conservative movement dealt with this twice, in modern era, is fascinating and instructive.

So to begin, Leviticus chapter 21 contains a list of rules whose intention is to guard the holiness of the priests. It begins with prohibitions on coming in contact with corpses, and then continues onto whom a priest may marry. *They shall not marry a woman defiled by harlotry, nor shall they marry one divorced from her husband*, reads verse 13. I'm not going to parse this carefully, or give you lots of different interpretations. It means what it means, and there's not much disagreement about that.

It's worth spending a moment considering what is contaminating about marrying a Jewish woman who was previously married. The law may be illuminated somewhat by reference to a passage in the prophet Ezekiel, who prophesies from Babylonia during the exile from Israel about the return to Zion and the reestablishment of the Temple and the priesthood. In Ezekiel 44:22, priests are similarly prohibited from marrying divorcees unless the former husband of the woman was also a priest.

A theory proposed by Dr. Eve Levavi Feinstein, a current biblical scholar, is that in the biblical mindset, a man leaves, through sex, something permanent of his essence, with a woman. That permanent leave-behind is contaminating to a priest, if it's not from another priest. (See <http://thetorah.com/purity-of-priests-contamination-through-marriage/>.)

But regardless of the reason, anyone who has the family tradition that he is a priest, a כהן, cannot marry a divorcee, according to the Torah. This was the undisputed law, the settled halakha, until in the modern era love started battling law.

In 1952, the Rabbinical Assembly's Committee on Jewish Law and Standards (that's the committee of the organization of Conservative rabbis that addresses questions of Jewish law) permitted rabbis to officiate at weddings between kohanim and divorcees. (The standing of bnot Kohen—daughters of kohanim, has never been addressed in this regard.)

The teshuva, or opinion, written by eminent scholar Rabbi Ben Zion Bokser, argues that according to the Bible, the marriage is clearly forbidden, but if it happens, it's still a valid marriage. He then discusses the less negative view we have of divorce and women who

divorce, and the “diminished role of the Kohen in our times.” He observes that “finding a suitable mate is difficult,” and “we must accept the fact that an unequivocal condemnation of such a marriage and an unwillingness to officiate may present Judaism as arbitrary and indifferent to personal happiness and as placing legal formalisms above human values, with the result that people would feel driven to leave the Synagogue and Jewish observances generally.” (Quoted in Rabbi Arnold Goodman’s 1996 teshuva; the 1952 teshuva is not available online.)

The concern about human values, about keeping people in the synagogue, about love, ultimately, as well, are so familiar, and current.

What the 1952 teshuva does not address is how the rabbis today have the right and ability to uproot a biblical prohibition. It was just assumed that they could.

That omission is what led Rabbi Arnold Goodman in 1996 to write a new teshuva concurring with Boker’s teshuva, yet adding a long section explaining why and under what circumstances rabbis today may uproot biblical laws, which we understand to be far more authoritative even than laws decreed by the rabbis of the Talmudic period. (See https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19912000/goodman_marriagedivorcee.pdf.)

Originally, before any of these permissions were granted, a Kohen who marries a divorcee would have to give up any privileges of being a Kohen, including taking the first Aliya, officiating at a pidyon ha-ben (a ceremony of the redemption of a first born), and blessing the congregation with birkat kohanim, the priestly blessing. Similarly, children of such a marriage would be considered challalim, still kohanim but who are forbidden to marry other kohanim or participate as a Kohen.

The 1996 teshuva, in affirming the permissibility of marriage between a Kohen and a divorcee, permits the Kohen to continue to function in all ways as a Kohen, and children would be regular kohanim as well.

This is a great example, to me, of our movement wrestling with love versus law, and allowing love to win. It’s also fascinating to note the two ways we can see the law committee taking halakha far more seriously in 1996 than it did in the 1950s. First, issues related to the functioning of kohanim were almost irrelevant, it seems, in the 1950s, but by the ‘90s, people in the Conservative movement cared about this again. Second, uprooting a mitzvah from the Torah was done with little fanfare or even justification in 1952. In 1996, the law committee was still willing to uproot a biblical prohibition, but felt that it needed to justify its ability to do so.

This is but one small case study, one skirmish, one little battle, in the ongoing war between law and love.

But if you want my prediction? The Latin poet Virgil, writing more than 2000 years ago, was right when he wrote, “omnia vincit amor,” love conquers all.

Shabbat shalom.