

The Right to Property and Inheritance in the Old Testament

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Abstract

The right to property is considered to be the most accomplished real prerogative, as it endows its holder with all the attributes deriving thereby namely the right to ownership, the right to use and the right to dispose of properties.

In the Law written in the Old Testament, the right to ownership had a special nature given the fact that Yahweh was the owner of the Promised Land, the Jewish people being regarded only as usufructuary. Inheritance is the legal and social practice of passing properties, titles, debts, rights and obligations of a deceased person onto the legal, testamentary heirs.

Inheritance has for ever played an important part in human societies and it still does in certain areas of the world. The Jewish right to succession had some features that derived from the patriarchal family, which had been thoroughly established even before the age of state consolidation.

Key words: Property, Inheritance, Right, Mosaic Law, Sabbatical Year, Jubilee Year

JEL classification: A13, K11, R14, Z12

1. Introduction

In the Old Testament, God promised the patriarchs Abraham, Isaac and Jacob, to give them to rule a special country, the country of milk and honey - Canaan, (Exodus 3:8) and where their offspring shall multiply like the stars in the sky and the sand on the seashore (Genesis 25, 17). The covenant was fulfilled after the death of Moses, when the Jews led by Joshua, entered Canaan, which they conquered not only by weapon but by the help and the will of God. Further on, the country was divided into 12 tribes. Despite the fact that the country of Canaan was promised as eternal heritage (Genesis 13, 15), its preservation as lawful right of the Jewish people depended entirely on the Jew's accomplishing their mission of God's chosen people.

Therefore, the Jewish people could not dispose of this territory, although the Jews had been nominated as heirs of the land of Canaan.

As we shall see further on, when debating an inheritance, only male offspring were called upon, and the females were summoned later on. If case there was, that the deceased did not have any children the inheritance was passed on to the deceased person's parents, and provided these had also passed away prior to the event, the brothers got the inheritance. As a rule, the elder son had a double share as compared to the other heirs, claiming that the family patrimony should not be squandered.

In the long run, the right to reciprocal succession between mother and sons, and between spouses was admitted as well. In its turn, the testament did not have any great importance attached to it; it only enabled the testacy to bequeath an inheritance solely to his lawful heirs, allowing him still to allocate different quotas than the ones established by law.

2. The Right to Property according to the Old Testament

The true master of the earth has always been God, and the Jews were only usufructuary (Leviticus 25, 13-16, 23). In order to make the Jewish people never forget this aspect, the Mosaic Law provided a divine resolution according to which every sabbatical year (once in seven years)

the land was not to be labored, but be allowed to celebrate a God's Sabbath itself. Similarly, every jubilee year (once in fifty years) each Jew who had been deprived of his land by sale, was to be re-granted to right to property, or was able to buy back the land inherited from his ancestors.

„The guidelines of this regulation are as follows: 1). Once having entered the land of Canaan, the sons of Israel must preserve their freedom after leaving Egypt and 2) the lands were not to be estranged” (The Bible, 2011, p. 225).

As to this practice which went valid only for the jubilee year, the Mosaic law provided several rules. First of all, if someone was compelled, due to financial reasons, to sell a certain property, was able to do so only for a limited span of years in accordance with the number of years left until the following jubilee year. The jubilee year was once in every fifty years starting with the year the Jews entered the land of Canaan in the time of Joshua.

In this year, the real estate wealth which had been sold was re-allotted without compensation to the former owner or to the latter's heir. In other words, the sale of a property was similar to the lease as they sold only the products resulted from cultivating the land until the following jubilee year.

Second of all, the person who sold the property, or his relatives, had the possibility to buy the estranged property at any time, returning to the buyer the difference from the price paid, that is the difference for the years left until the jubilee year.

God had commanded very clearly regarding the manner in which the chosen people were to make use of the Promised Land, setting the sabbatical year on one hand, and the jubilee year on the other hand.

And in the seventh year the land is to have a year of Sabbath rest, a Sabbath to the Lord. Do not sow your fields or prune your vineyards. (Leviticus 25:4). The sabbatical year „is considered after the Mosaic law rest in the honor of God and this is manifest in not laboring the land enabling thereby the Jewish believers to bear in mind that God is the true owner of their lands acquired by drawing lots and that they are only temporary usufructuary of the goods produced on these lands” (Neusner, 1998, p. 44). The people making a feast of the fruit of the land symbolize and anticipate the Eucharistic feast: „A restorative feast is the peace in our Lord, which brings about the peace in our souls. That is why we are to find rest in the spoken Word” (St. Ambrose of Milan, 1994, p. 398).

Regarding the year of jubilee, in the book of Leviticus, Moses gave a very precise set of rules as to property among the Jewish people. „You are to buy from your own people on the basis of the number of years since the Jubilee. And they are to sell to you on the basis of the number of years left for harvesting crops”. (Leviticus 25:15). This requirement clearly refers to the land transaction. We should keep in mind the fact that for the following jubilee year land ownership was to be reverted to the original owner, and, when determining the price, the transaction had to take into account the number of years since the last year jubilee, as well as the number of those remaining to the next, which in substance is the same. „By formulating the terms of the vendor, of the person who buys respectively, the two members of the phrase are equivalent” (Monumenta linguae dacoromanorum, Biblia 1688, 1993, p. 200).

„When the years are many, you are to increase the price, and when the years are few, you are to decrease the price, because what is really being sold to you is the number of crops.” (Leviticus 25:16).

The chronological reports concern the period between two successive anniversaries. In this regard, the price of agricultural land is proportional, both in terms of its surface extent and the number of crops that the buyer will get, taking into account that the property will return the next jubilee year to the original master. This type of regulation of land ownership is based on the principle that God is the sole master of the earth, which He divided at first to the twelve original tribes of Israel, which they are to preserve as such.

„The land must not be sold permanently, because the land is mine and you reside in my land as foreigners and strangers.” (Leviticus 25:23). We infer thereby unequivocally that the land will not be sold at any time; this commandment is final, firm and without possible return. „Moreover, the purpose of all such regulations is twofold: 1) Once you enter the land of Canaan, the Israelites must remain free after their departure from Egypt, and 2) the lands must not be alienated” (The Holy Bible, 2001, p. 151).

„they are to determine the value for the years since they sold it and refund the balance to the one to whom they sold it; they can then go back to their own property.” (Leviticus 25:27). Consistent with the special regime of land ownership in Israel, when the amount needed for the redemption of the sold land was gathered, the former owner was forced to return the buyer a sum of money. This amount was calculated as follows: the price of crops that benefited the buyer was deducted from the price paid, plus a surplus equivalent to the price of harvesting remaining until the next jubilee year, when the land would be returned to the original owner anyway (Keil and Delitzsch, 2006, p. 293).

„But if they do not acquire the means to repay, what was sold will remain in the possession of the buyer until the Year of Jubilee. It will be returned in the Jubilee, and they can then go back to their property”. (Leviticus 25:28). From this verse it is clear that the original owner repossessed the land when the jubilee year came.

„Anyone who sells a house in a walled city retains the right of redemption a full year after its sale. During that time the seller may redeem it”. (Leviticus 25:29). The requirements regarding the buildings or the residential homes do not fall within those relating to agricultural land as fortified buildings in cities were considered absolutely essential goods, like the earth. Losing a house did not involve the loss of means to get food (Miller, 1984, p. 16).

“The Levites always have the right to redeem their houses in the Levite towns, which they possess.” (Leviticus 25:32). The Levites were not granted the right to personal property, yet they could possess the cities which were governed by their own legislation. „The tribe of Levites, descendants of Levi, one of the sons of Jacob (cf. Genesis 29:34), had special duties in Israel: while some of them, namely the descendants of Aaron, fulfilled priestly functions, other members of the tribe were involved in various auxiliary cultic and religious activities, under the guidance of priests. The specificity of their community duties did not allow them to carry out other gainful activities, so the only wealth were the homes they lived in and thus the land for other community members could not be permanently alienated (Clarke, 2012, p. 568).

„So the property of the Levites is redeemable - that is, a house sold in any town they hold - and is to be returned in the Jubilee, because the houses in the towns of the Levites are their property among the Israelites.” (Leviticus 25:33). Unlike the homes found within the walls owned by the descendants of the other tribes of Israel, the law did not guarantee ownership and possession of which they have purchased, where sellers do not have the opportunity to redeem them within a year. "The law allows the Levites to redeem them at any time, in the way that it allows ordinary people on the fields, which the houses the Levites are comparable to" (Philon of Alexandria, 1970, p. 408).

The right to redemption stretched freely on land, the houses in villages and farms not surrounded by walls, the houses the Levites and the land pertaining to it. Exceptions were the homes in cities which were sold and could be redeemed only within one year from the moment the sale. “After this term neither was the option of redeeming valid nor such a house could be returned to the former owner in the jubilee year. Also, the land consecrated to God on the basis of a vote or a solemn promise, was not returned to the original owner in the jubilee year, but could be redeemed at any time by paying the difference of price for the time that is left before the jubilee year, plus a fifth of the price” (Abrudan, Cornițescu, 1992, p. 157).

If someone buys a piece of land they devote to God, this was returned in the jubilee year to its original owner, whom the donor had bought it from, because the old owner when he sold it, had done it with the belief that will take back the property the moment of the jubilee.

These provisions are very clear about the right of ownership and the coordinates of the possible alienation of property were very useful because they avoided the formation and emergence of landowners, and the impoverishment of part of the Hebrew people. Also, it took into account the integrity and heritage of tribes and families belonging to tribes and their perpetuation in history.

As regards ownership, a distinction is made between movables and immovable. Movables form the individual personal property, which only in form of buying and selling were fit for passing from one person to another. This was not valid for immovable property (land, buildings).

As for material goods, the law protects property rights and sanctions its violation. There are no laws for the violation of property rights, for the special conception of the Mosaic Law in this matter. We are only told that it is punishable by law the moving of boundary stones which would

impede on the immobile heritage (Deuteronomy 19, 14). In case of theft, embezzlement or larceny, the law provides the restitution of the alienated property, by adding a part of real price, to compensate the victim for the profit that the stolen thing would have brought, as long as it was in the possession of the thief (Exodus 21, 33-22).

3. The provisions of the Mosaic law regarding inheritance rights

The Old Testament law stipulated that after one's father's death, the sons shared the inheritance among them, so as firstborn to receive two parts and the others only one part (Deuteronomy 21, 17). The firstborn was considered the first son of the father and not the mother (Brueggemann, 2010, p. 36). Thus, if a man had more wives, only one of the children born of them is considered a firstborn by birth. If the father died, the first born had the duty to take care of all his father's wives left widowed and of the unmarried sisters, regardless of which parent they came.

Initially, the Old Testament did not mention anything about the inheritance rights of children conceived with concubines. In the age of the patriarchs, they were treated in accordance with the father's will. In this respect, we have the example of Abraham who gave only certain gifts to the sons of concubines, and did not consider them as his heirs having equal rights with his legitimate children. On the other hand, Jacob treated equally the sons of his concubines and those born of legitimate wives. This attitude of Jacob was later taken over by the Mosaic Law, which grants children born of concubines the same rights as legitimate ones.

Girls did not real inherit real assets from parents, but were ensured dowry money, clothes and other goods upon marriage (Old Testament Theology, 1996, p. 109). Only provided they married men of the tribe, they could receive land as dowry. This was especially true if they were the sole heirs of their parents (Joshua 15, 18; 1 Judges, 14).

If someone died without leaving behind any heirs, sons or daughters, his brothers became heirs of his personal property. If he did not have any brothers, the right to inheritance was taken by the uncles (the father's brothers), and if they were missing, the close relatives would immediately follow (Numbers 27: 9-11). We note that maternal blood kinship was not taken into account because no one wanted to transfer the inheritance to another tribe, which the mother could be part of. We also note that the widows could become heirs of the husband and had to be maintained as such by the sons who inherited wealth or by the proximal heirs provided there were no offspring. However, a part of the inheritance could be left by will to widows (Pressler, 1993, p. 69).

Left to heirs, the widows were often seen forced to return to their parents' house (Genesis 18, 11; Leviticus 22, 13). These social cases made the prophets of the Old Testament often condemn the neglect and disregard of widows (Isaiah 1: 23; 10: 2; Jeremiah 5, 28, 7, 6, 22, 3; Ezekiel 22: 7; Zechariah 7, 10; Malachi 3: 5).

Later on, in the Maccabean era, widows were awarded part of the spoils (II Maccabees 8: 28-30).

The adopted could have the right to inheritance. In this respect, we have the example of patriarch Jacob who adopted the two sons of Joseph, Ephraim and Manasseh who were born in Egypt and give them an inheritance with other tribes. (Genesis. 49:8-12; I Corinthians 5:1).

4. Conclusions

After conception of the Pentateuch, the land belongs to God and man is only a usufructuary. As we could see, the accumulation of landowning properties was brought to cessation by the jubilee year, when the alienated rural properties which had been for any reason without any consideration went to the original owners. Moreover, the land, if sold, did not change owners, as the harvesting products were sold for one or more years.

God as exclusive owner of the land, gave detailed provisions for inheritance so that the will of the Mosaic Law remains unknown because it could not be implemented, God's will being superior to any other law.

In Judaism, inheritance is a complex issue, as we have seen above. It is regulated, as well as the civil laws of most countries of the world, by establishing and clarifying ancestry - if any - of fatherhood. In addition, according to the Old Testament provisions, inheritance is passed down the

male line. If a family had several children, the family land is shared, upon the father's death, among the sons, the firstborn receiving some two times greater than his brothers, and the girls get nothing. Under these circumstances, the boys have a responsibility to maintain their sisters until the girls marry when that responsibility shifted to the husband. In addition, one of the rules underlying inheritance is that the land should remain in the family, or more specifically, within the tribe, which is due to the fact that the land of Israel was divided by lot at the entrance of the Jews in the country during the time of Joshua.

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