

# Slave Wives and Transgressive Unions in Biblical and Ancient Near Eastern Laws and Literature

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## PROLOGUE

Several years ago, I attended a talk within the Orthodox Jewish community in London on monogamy among the patriarchs. As it sounded intriguing, given the polygamous situation in Jacob's household, I was curious to hear what this well-known rabbi had to say on the matter. The focus of the lecture was Isaac and Rebecca, who were indeed monogamous. The issue of polygamy among the patriarchs was never mentioned.

After the presentation, the rabbi asked the audience if there were any questions. As something was clearly missing from this talk, there was a pause, or perhaps the fall of silence may have been due to the awe the audience felt toward the speaker. Following what seemed like a very long time, a young man asked for the rabbi's opinion on Abraham's marriage. (No one, it seemed, dare ask about his view on Jacob.)

The rabbi replied that of course Abraham's marriage to Sarah was monogamous, and then, as an aside, he added, jokingly, "apart from the handmaiden." There was some laughter, possibly out of politeness for the revered man's joke, or embarrassment, or, who knows? But not everyone laughed. I was sitting near a young black woman, who had told me earlier that she was converting to Judaism. She and I exchanged glances, both of us feeling shocked.

I have no idea why I have always been interested in Hagar and Bilhah, and the issue of oppression. But my idea now, as a writer reading the biblical text, is that the composers and redactors of these richly layered, complex stories

knew what they were doing. Those biblical characters were never meant to be understood in the way that this Orthodox rabbi does: inconvenient characters to be avoided, not to be looked at in the eye, mentally cast into the wilderness. I now see his attitude as a problem arises when institutionalized theology meets biblical literature: the two cannot interact openly and honestly without an enormous amount of difficulty.

Sometime later, I came across the ancient Near Eastern (ANE) law code, the Law of Hammurabi<sup>1</sup> 146, which I will look at later in this essay. In my view, the law seems to be dramatized in the text of Gen. 16:3–7. I put a bookmark on the page, and mentally filed away this information as an idea to research for an article one day. The call for papers for the Contextual Interpretation of the Bible was the starting pistol, an opportunity for me to bring together and explore all these disparate threads: the “joke” about “the handmaiden”; the dramatic characterization and writing in the biblical text, which is a never-ending journey; an endless fascination with the marginal women in the Bible, such as Hagar, Bilhah, and Tamar; and my surprise at the possible role that ANE laws may have played in biblical literary constructions.

## INTRODUCTION

This essay contends that biblical narratives were composed in the knowledge that audiences were familiar with different ANE legal codes in cuneiform, as well as Hebrew biblical laws on conjugal relations and inheritance laws involving slave wives. I suggest that much of the drama in the Bible is created by main characters contravening written biblical and ANE laws, and that audiences would be aware that such frissons were being referenced. Furthermore, those breaches of legal codes form the subtext of the story lines; indeed, the characters’ contraventions add so much depth and dramatic irony to the narratives that it is unlikely they have not been created or harmonized in this reverse way.

The narrative structures selected below work with proscriptive ANE laws on conjugal relationships with female slaves and free women in particular. Surprisingly, in the case of Hittite Laws,<sup>2</sup> there is a correspondence with the relevant group of laws on permitted sexual partnering and revisionist versions of this legislation in Leviticus 18.<sup>3</sup> On a similar note, David Wright, in his detailed study of the Covenant Code (CC) (Exod. 20:23–23:19) and the Laws Hammurabi (LH) noticed that the CC followed the LH in sequence (Wright 2009: vii). He concluded that “the role of the CC from beginning to end reflects a calculated use of LH” (Wright 2009: 344). His arguments, first put forward in 2003, have been critically accepted with reservations by Bruce Wells, who

argues that Wright has probably overstated the case for an actual direct linear dependence of the CC on the LH (Wells 2006: 118). By contrast, Calum Carmichael relates biblical laws to biblical narratives, but his exegesis has not found wide scholarly acceptance (see, for example, Carmichael 2010; Fischer 2012). My postulations cover much the same ground as Carmichael, but my interpretations are completely different from his, and I bring ANE laws into the equation more frequently.

I put forward the proposal that the behavior of many main characters contravenes ANE family laws, some of which are neither replicated nor echoed in the Bible, but ancient audiences must have known of such codes because the references are so clearly marked in the stories. Furthermore, some of the laws in the biblical code were specifically invented to heighten the narrative. These did not emanate from ANE antecedents and had no other purpose other than as theatrical props in the story line. Other biblical laws are clearly signposted in the drama and have ANE precedents but have been specifically tailored from cuneiform legal codes to intersect with the stories. The narratives that they underline may have even been inspired by the earlier Mesopotamian material.

I argue that audiences would have understood the ironic literary conceit implying that biblical laws on transgressive unions postdate the characters' actions and choices; hence, the characters cannot be fully culpable of their offenses because those laws did not yet exist. Noticeably, however, they then become aware and consciously do not repeat the offense after the fact (for example, Gen 38:26d). The central story analyzed in this essay pertains to the Jacob cycle, with particular reference to Reuben and Bilhah (Gen. 35:22). The narratives of Judah and Tamar (Gen. 38), and Hagar and Ishmael (Gen. 16:1—18:5; 21:1–21; 22:2, 6–7, 10, 16) are discussed using the same paradigm.

The biblical dramas discussed here are created by deliberate, highly intricate paradoxes, lacunae in the biblical laws that bridge one statute to another, and by the ambiguity about which laws, precisely, are being referenced and crisscrossed in the text. Often, several laws are involved. The laws are characters; that is, virtual *dramatis personae*: they have a presence in the scenes selected and referenced in this study, and they interact with the wider narrative. My specific interest concerns the challenging nature of some of these stories that—as I argue—illuminate moral and legal codes. In the cases of Hagar, Zilpah, and Bilhah, the narratives sympathetically highlight the dearth of biblical laws concerning slave wives of the master. This is in clear contrast to the slave women's roles as second (and third and fourth) wives and surrogates in the biblical stories, and the plethora of legislation concerning them and their children in ANE laws. An “audience-aware, legal-literary framework” can be

used to analyze difficult layers of text in the Bible, offering an integrated, holistic perspective, as opposed to taking a separate legal approach (such as Carmichael 1985, Levinson 1997, or Jackson 2007), or a literary critical analysis (such as Alter 1981) as single areas of study.

#### TRANSGRESSIVE RELATIONS IN DRAMA AND ANE LAW CODES: A COMPARATIVE CONTEXT

Human psychology and feelings seem to play less of a role as sources of motivation for actions and character development in the biblical stories, compared with Greek mythology and drama. One of the differences between the use of transgressed family laws and taboos in classical myths and plays is that classical dramatists may have been more interested in incest taboos as powerful thematic infrastructures in order to uncover the psychology of mythological dramatis personae such as Oedipus, Electra, and Phaedra. The characters' emotions propel them on journeys of personal inner change in order to effect inevitable tragedy. Hence, it may be suggested that ANE law codes in antiquity, particularly those on sexual and behavioral transgressions within the family group, may have inspired some of the most famous classical dramas, although in classical Greece the prohibition against incest was an "unwritten law."<sup>4</sup> There is no reason, though, why audiences would not have been aware of other written law codes and legal literature in the region.

Given that this idea is speculative, one may suggest that Sophocles's *Oedipus the King* (Storr 1932) could have been directly influenced by the law that a man should not have intercourse with his mother after his father's death (LH 157: Roth 1997: 111) or simply not have sexual relations with his mother (HL 189: Roth 1997: 236; Lev. 18:6-7a).

Euripides's (Kovacs 1998) and Sophocles's (Storr 1967) *Electra* may be not about suppressed desire for the father (a popular interpretation we owe to Jung [1912: 69]) forbidding father-daughter sexual relations (LH 154: Roth 1997: 110; no biblical prohibition), but about the implementation of the punishment for a wife who has her husband killed so as to marry another man. Legally approved retribution is explicitly stated in the final scenes of both versions of the plays. Given that the laws in the tragedies are not necessarily identical to the unwritten legal codes, some poetic license must be understood. The punishment in ANE law for the instigating, adulterous wife is impalement (LH 153: Roth 1997:110; no corresponding offense in the Bible). In Euripides's version of *Electra*, Orestes, Electra's brother, kills their mother, Clytemnestra, by driving a sword down her throat and murdering her husband.<sup>5</sup> Under Greek

Draconian law, the price would certainly be death; in later law, the penalty of death or exile would be decided by the family of the victim. Euripides, however, does not seem to approve of “blood for blood” in *Orestes* (Allen 2005: 508).

Forbidden relations between in-laws are reflected in Euripides’s drama *Hippolytus*, where Phaedra is afflicted by an unrequited longing for her eponymous stepson (Kovacs 1995). The inspiration for a story line of emotional incest may have been inspired by the prohibition on such a union in ANE and Hebrew laws (LH 190; Roth 1997: 236; Lev. 20:11; Deut. 23:1; Deut. 27:20), creating a greater dramatic twist than a tale of unrequited love between nonrelatives. The familial relationship between Bilhah and Reuben, stepson and stepmother, is the same, but the story is different and the relationship rules much more complicated and unclear, as will be discussed below.

In the Bible, some threads of authorial interest in the literary reenactment of law codes revolve around the consequences of these broken taboos on inheritance, future generations, and the status of being an ancestor in the sacred genealogy of David. The purpose of the biblical legal-literary dramas may be to set boundaries and fixed social positions for the descendants to come.

#### NARRATIVE-DEPENDENT LAWS

An example of a biblical law probably borne by the needs of the narrative is Deut. 21:15-17:

If a man has two wives, one loved and one hated and both the loved and the hated have borne him sons, but the first born is the son of the hated one, on the day he bequeaths his estate to his sons, he may not treat the first-born son of the loved one in preference to the son of the hated one, who is the first-born. Instead, he must accept the first-born, the son of the hated one, and allot to him a double portion of all he possesses; since he is the first fruit of his vigor, ראשית אגרו, the right of the firstborn is his.<sup>6</sup>

This is a key law in the story of the loss of Reuben’s birthright, his punishment from Jacob for sleeping with Bilhah. A major theme in Genesis is the usurping by the younger brother of the elder, the overturning of primogeniture. The law alludes to Jacob’s two elder sons by different wives. This rule appears to specifically refer to the inheritance rights of Reuben, a law tailored to give a double portion to the firstborn son of the hated wife. In particular, Deut. 21:17 seems to assume that the firstborn son of the hated wife is the father’s “first fruit of his strength,” ראשית אגרו, *reshit ’ono*), hence a reference to Reuben. This is a

wordplay on *Reuben* (רֶאוּבֵן) and correlative with Jacob's direct oral reference to him when he revokes these rights to Reuben, "first fruit of my strength" (רֵאשִׁית אֹרֶן), on his deathbed in Gen. 49:3, since Reuben "went up to his father's bed" (Gen. 49:4). The Chronicler explains that this was a punishment for his incestuous liaison with Bilhah (1 Chron. 5:1) in Gen. 35:22, and that the birthright consequently went to Joseph (1 Chron. 5:2), the firstborn son of the loved wife, in contravention of Deut. 21:15-17.

Ancient Near Eastern laws protected a son from being totally disinherited unduly: he must commit a serious offense, not once but twice, to be so treated (LH 168-69; Roth 1997: 113). Biblical law says nothing about offenses that would be punishable by disinheritance, or of the loss of the right of the preferred heir, or under what circumstances the double portion would be removed. The amalgamation of biblical laws and situations, balancing and relating them to analogous ANE laws and biblical narratives, is, of course, prevalent throughout the Bible (see, for example, Brenner 1996: 129-31).

Using the legal-literary paradigm, I shall argue that Deut. 21:15-17 was created by the authors of the Bible solely for the purpose of the complex narratives behind Gen. 35:22. Here, there are two firstborns, and Reuben's story, so much briefer than Joseph's, may be in many ways far more complex psychologically, even if it is not the literary tour de force of the Joseph cycle. Westbrook states that Joseph's double portion was transferred to Ephraim and Manasseh when the tribes of Israel divided up the land of Canaan (Josh. 14:4, 17). Moreover, that the allotment of the double portion to Joseph was "legitimate" and did not contravene Deut. 21:15-17, due to "the sin of his firstborn son against him [Jacob]" (Westbrook 1991: 136 and n2).

This biblical law works so well with the story that, I suggest, it is probably unlikely to have been composed before Gen. 29:1-30:24 and Gen. 35:22ab were authored. It could have been created at the same time, or afterward, but on balance I would suggest that Deut. 21:15-17 was part of the narrative, a kind of cross-reference. Joseph, as the firstborn son of the loved wife Rachel, receives Reuben's inheritance, as 1 Chron. 5:1-2 explains; and Judah, the fourth son of the primary (albeit hated) wife Lea, becomes through a process of elimination the blood-inheritor, the ancestor of kings (Gen. 49:10). This is curious because it is Judah's idea to sell Joseph (Gen. 37:26-27), and that is a capital offense in Deut. 24:7: "If a man is found to have stolen a soul from his brothers from the sons of Israel, enslaving him or selling him, that thief shall die." Reuben, however, is the hero who saves Joseph's life, wishes to rescue him, and mourns when he is sold (Gen. 37:21-22, 29). This behavior does not soften Jacob's attitude toward Reuben or absolve him of sleeping with Bilhah. The close

narratological relationship between Deut. 24:7 and the selling of Joseph by all the brothers except Reuben, led by Judah, for twenty pieces of silver to the Midianites/Ishmaelites (evidence of redaction) in Gen. 37:28 would suggest that this law, too, is also probably part of the story. Were the law to be implemented, possibly all the brothers except Reuben and Joseph, the two firstborns signified in Deut. 21:15-17, would have to be punished by death. Joseph, however, excuses them all (Gen. 45:4-5; it is uncertain whether he actually forgives them).

Deuteronomy 24:7 is problematic as a general law code since the wording, if taken literally, really does refer to Joseph (taking Israel to mean Jacob); or, if the phrase “a soul from his brothers from the sons of Israel” is taken in the wider sense, the prohibition does not apply to Israelites who steal non-Israelites and sell them into slavery. Thus Israelites may kidnap gentiles with impunity. This rather perverse interpretation may be replaced by a more rational exegesis if one considers that Deut. 24:7 is intended to be part of the dramatic scenery to Genesis 37, and is not a real law at all.

#### REVISED LITERARY LAWS

The parallel biblical law that is integrated with Deut. 21:15-17, and is an interesting revision of an ANE law, is the prohibition on marrying two sisters in their lifetime, Lev. in 18:18: “Do not take a woman as a rival [לצַרֵּר] to her sister and reveal her nakedness in the other’s lifetime.

According to Tosato, the law has been interpreted in the Damascus Document (CD A 4:19-21 and the Dead Sea Scrolls equivalent, 6Q 15 1 1-3. García Martínez and Tigchelaar 1997-1998: 556-57; 1152-1155) to mean a ban on polygamy, thereby taking “sisters” to mean “women” rather than biological relatives (Tosato 1984: 206-7). This may be the case in the Dead Sea Scrolls, but Schenker argues, alternatively, that “nowhere in the Old Testament is such a meaning for ‘sister’ attested” (Schenker 2003 [2011]:166, n. 9). Leviticus 18:18 would thus appear to be a succinct and interestingly worded prohibition on literally marrying the biological sister of one’s wife, thereby creating a “rival wife” (from the root צַרֵּר Qal; BDB, 865) to the first wife during her lifetime.

This law seems to be a reference to the palpable unhappiness of Leah while her sister was the favorite wife (Gen. 29:30ab, 31-33; 30:15). It may be a derivation from the extant Hittite prohibition on marrying two sisters where both live in the same place (HL 191b: Roth 1997: 236). In HL 191 (Roth 1997: 236), (a) a free man may sleep with two free sisters and (b) with their mother (c) if they are in different countries, but not in the same geographical location, presumably because the potential for jealousy is lessened if they resided in different places. However, if a wife dies, a man is permitted to marry her sister

(HL 192: Roth 1997: 236; this is also the case according to the wording of Lev. 18:18). In Hittite laws, there are detailed codes distinguishing between sexual relationships that a free man is allowed to have with women who are related to each other if they are free, and if they are slaves (not in biblical law).

In the Bible, two adjacent edicts separate and revise the incestuous character of HL 191 by distinguishing between (d) a man sleeping with related women from three different generations and marrying the granddaughter (Lev. 18:17) and (e) having conjugal relations with two sisters (Lev. 18:18): “Do not uncover the nakedness of a woman and her daughter, nor marry her granddaughter and uncover her nakedness . . . it is depravity (Lev. 18:17). Lev. 18:17 partly repudiates HL 191 and extends the biblical version of the prohibition to marrying the granddaughter of the third generation of women (mother-daughter-granddaughter) with whom the man has had sex. This is a different incestuous pattern from that of HL 191 (the mother and her two daughters), which is not brought into the Hittite law at all. The scenario is extremely odd and has no connection with any biblical narratives.

The wording of Lev. 18:18 carefully absolves the husband from (e) practicing depravity by sleeping with two biological sisters, but rather focuses on producing unhealthy competition and unhappiness if the marriage to the two sisters takes place while they are both alive. It is possible that the audience was aware that Jacob was committing an offense in both HL 191 (a)(c) (sex with two biological sisters in the same location), and the Levitical Holiness Code (e) (marrying two sisters within their lifetimes, one as a rival wife). The unhappy story thus justifies the biblical law.

There were, however, extenuating circumstances for Jacob’s marrying Rachel a week after his marriage to Leah (Gen. 29:23–28) that would be taken into consideration, so as not to condemn Jacob. The fact that Lev. 18:17 and 18:18 reflects all the prohibitions of HL 191 would suggest that the author of Lev. 18:18 and Gen. 29:1–30:24 may have been inspired by HL 191 (a) as the infrastructure for the narrative, and that these regional laws were well known.

In HL 194a, a man can have incestuous unions with slave sisters and their mother, in the same location, unlike with free women (HL 194a: Roth 1997: 236). Hittite Law 194b permits a father and son to have sex with the same prostitute. The reverse-gender incest case studies, a slave woman having sexual relations with a father and son in different locations (Gen. 35:21–22, Bilhah and Reuben and Jacob), or a free woman pretending to be a prostitute having sex with a father and his sons who are brothers who are her former husbands, each in their own lifetimes consecutively (Genesis 38, Tamar and Judah, Er and

Onan) could well constitute biblical case law while echoing a gender reversal of HL 191 and 194, and Lev 18:18.

While Jacob may have had a reason for marrying both Leah and Rachel, there were no extenuating circumstances for taking their servants Zilpah and Bilhah to bear more children for him as third and fourth wives. This situation occurred directly as result of the sister-wife rivalry (Gen. 30:4–13). According to *4QTestament of Naphtali* in the Dead Sea Scrolls (4Q215 fr. 1–3, Stone 1996) and the Book of Jubilees (*Jub.* 28:9), Zilpah and Bilhah were also sisters (Halpern–Amaru 1999). Their father, אַחִיּוֹת (*Ahiyot*, meaning “sisters”), a member of Laban’s household, was redeemed by Laban when he went into captivity. Their mother, Hanna (חַנָּה), was a maidservant of Laban, whom Laban gave to Ahiyot. The Qumran text creates symmetry in Jacob’s household: the familial relationship between Jacob and Zilpah and Bilhah, two biological sisters, mirrors his relationship with sisters Leah and Rachel. The emotional hierarchy of the relationships is also replicated.

#### A CLOSER LOOK AT GENESIS 35:22

In Gen. 35:22, Bilhah is referred to as a *pilegsh*, a free woman concubine of Jacob; that is, she is no longer a slave surrogate womb for Rachel. According to Bernard Jackson, the ownership of the woman slave who is given to the master to bear children for her mistress remains with the wife (Jackson 2007: 47). So upon her mistress Rachel’s death (Gen. 35:18–19), Bilhah should be free. Or is she? For Ze’ev Falk, citing as an example the unfortunate “concubine” of Judges 19 (Falk 1964: 127), a *pilegsh* is free to leave. Confusingly, Bilhah is described as an אַמָּה (*amah*), which Jackson notes means a slave in perpetuity, and a שִׁפְחָה (*shiphah*), a freeborn maid (Jackson 2007: 46–48). However, Edward Bridge argues that the meanings of the two terms are not dissimilar and that they both designate slave women (Bridge 2012).

One reading of Gen. 35:22, then, is that Bilhah, now a *pilegsh*, has, of her own free will, taken the place of Rachel sexually after Rachel’s death. This, I suggest, needs an explanation. Having been made to be a surrogate for Rachel, why would she choose to become Jacob’s concubine and not take her freedom? If there were an oral tradition, as reflected in Second Temple literature, that Zilpah and Bilhah were sisters whose parents were part of Laban’s household, she may have chosen not to leave. Furthermore, if she left the clan, she would be leaving her two biological children, Dan and Naphtali, as well as Rachel’s natural offspring, Joseph and Benjamin. Since the incident of Gen. 35:22 almost

immediately follows the death of Rachel in the text (Gen. 35:16–20), the two notices are most probably linked.

The law of Lev. 19:20 appears to permit a slave woman who has not yet been freed and has been acquired by a man as his concubine (the Hebrew term is *שפחה נחרפת לאיש*; see BDB, 358) to be able to be impregnated by another man before she is manumitted, both of them with impunity. What it actually states is that a man can impregnate a slave woman who has not yet been freed and has been acquired as a concubine by another man, but the second man must bring an indemnity. This law, written from the male point of view, is so specific and relevant to the discussion on Gen. 35:22 that it may be another theater-piece law. Given the incestuous nature of the relationships, concerning a father and son, the situation is more complicated. The wording of this law does not imply that force of any kind from the second man is permitted. (Incidentally, Leviticus 21–22 describes the second man's guilt offering as a ram with which his sin would be forgiven by a priest. If the law was invented for Reuben's liaison with Bilhah, as suggested here, could Reuben's indemnity be echoed with irony in Gen 37:31, where all the brothers, seemingly including Reuben, slaughter a ram and dip Joseph's garment into its blood?)

Hittite law codes allow a father and son to have intercourse with the same slave woman, or prostitute (HL 194: Roth 1997: 236), but a son is not allowed to sleep with his stepmother while the father is alive (HL 190: Roth 1997: 236). So, was Bilhah a stepmother (Lev. 18:8; Deut. 22:30; 23:1; 27:20), or a slave wife (Lev. 19:20; 25:44), or, as the mother of four of Reuben's half brothers, a maternal aunt (no biblical prohibition)? Did Reuben think that Rachel's death changed Bilhah's status so that she was due to be freed (Lev. 19:20), or so that she was already free? Is it a surprise to the audience that Bilhah is now described as Jacob's concubine? Which laws on sexual partners did Reuben transgress, exactly?

If Bilhah's status was that of a slave in perpetuity, she could be passed from father to son as a piece of property to be inherited (Lev. 25:44–46), a situation compatible with HL 194. However, since Rachel was dead, Bilhah may no longer have needed to provide her mistress's husband with wifely services. Of note is the information that Israel (Jacob) was in another location (Gen. 35:21–22a); thus the situation under Hittite legislation would have been permissible if Bilhah were a freeman and Jacob and Reuben were free females (HL 191).

Andrea Seri's important study on women domestic slaves in the Old Babylonian period (1894–1595 BCE), based on actual contracts, letters, and documents rather than on official law codes (Seri 2011), reveals that female

slaves could be purchased as domestic servants for the mistress and as second wife for her husband where the wife was childless or had a disease (Seri 2011: 51–53, 56; Westbrook 1988: 107–9). In such cases, the slave’s parents would receive the full betrothal price for their daughter (Seri 2011: 51–52). This does not seem to be the contract with which Bilhah was given to Rachel (Gen. 29:29; 30:3–8). Although Jacob worked for wages to pay for Rachel, Leah, and the flocks (Gen. 29–30:18), there is no mention of his paying the betrothal price for the intimate services of their slaves. In different contracts, upon a mistress’s death, her slaves and her children could be set free (Seri 2011: 57, 59, 61), although here Dan, Naphtali, Gad, and Asher did not belong to Bilhah and Zilpah and were clearly adopted by Rachel, Leah, and Jacob (Gen. 30: 3–13); therefore, they were not slaves. Domestic slaves could also be passed to the mistress’s descendants as inheritance as part of her estate, as they were considered property, along with crockery and furniture (Seri 2011: 54). They could also remain in the family if the slave were adopted by or married to a relative, such as a brother or son (Seri 2011: 59).

If we look at Gen. 35:22 in its legalistic context only, without any narratological information, the text may be raising several legal issues with regard to the status of Bilhah as Jacob’s concubine after Rachel’s death. As the contract with Rachel was no longer in place, if Bilhah was not to be inherited among the family in perpetuity as a piece of property like a pot or a chair (though this may have been the case according to Lev. 25: 44–46), was she obliged, or did she wish to continue providing, free martial duties for Jacob (as a favored sexual partner, like Rachel)? If Reuben thought that she had slave status, could he have been making a bid to marry her? Or, if Bilhah were part of Jacob’s estate, inherited from Rachel, Reuben, if greedy, might try to claim her in lieu of his expected inheritance from Jacob. For an answer, we would need to take into account the literary characterization.

Suzanne Scholz argues, on the basis of the vocabulary used, that Reuben raped Bilhah (Scholz 2004). However, her textual argument is not watertight. The text states that Reuben “went” (וַיֵּלֶךְ, *vayyelekh*) and “lay” (וַיִּשְׁכַּב, *vayyishkabh*) with Bilhah (Gen. 35:22b). There are no verbs connoting that Bilhah was forced or subdued in Gen. 35:22. In contrast, the language of Shechem and Dinah uses “he humbled” (וַיַּעַנְהָ, *vaye’anneha*) in addition to “he lay” (וַיִּשְׁכַּב, *vayyishkabh*) and he “he took” (וַיִּקַּח, *vayiqqach*; Gen. 34:2). The vocabulary of physical force is certainly used unequivocally in reference to Amnon’s rape of Tamar (2 Sam. 13:14). Brenner argues that Reuben was trying to usurp his father’s position as the head of the clan before Jacob’s death (Brenner 1997: 106). According to Carmichael, Reuben was transgressing a prohibition

on sleeping with his father's concubines while his father was still alive, and it was understood that a son would inherit his father's wives after his death (Carmichael 1985: 221–23). For Anthony Phillips, Deut. 23:1 was a response to the events of Gen. 35:22 (Phillips 2002: 247).

In biblical law, as Carmichael and Phillips argue, “Uncovering the father's skirt” by sleeping with his wife means that the son committed incest with the father. The three biblical laws forbidding sex with the father's wife all relate the crime to father-son incest. They are as follows:

- Lev. 20:11: “If a man lies with his father's wife, it is the nakedness of his father that he has uncovered: the two shall be put to death; their bloodguilt is upon them.”
- Deut. 23:1: “No man shall take his father's wife nor uncover his father's garment.”
- Deut. 27:20: “Cursed is he who lies with his father's wife, for he has uncovered his father's garment.”

And in HL 190 we read: “If a man has sexual relations with his stepmother, it is not an offense. But if his father is still living, it is unpermitted sexual pairing” (Roth 1997: 236). Taking into account the Chronicler's explanation, it would appear that Reuben was being punished for a sexual offense against his father, albeit according to an anachronistic law from the future, rather than being disinherited for making a power bid, as reflected in the story of Absalom, who raped David's concubines (2 Sam. 16:22), and Adonijah, who asked for Abishag (1 Kgs. 2:13–25).

The same conclusion appears in Second Temple literature where the sexual intrusion itself is highlighted, such as *4QCommentary on Genesis A* (4Q252) 4:3–7; *Testament of Reuben* 1:37–41; and *Jub.* 33:6–9. In the *Testament of Reuben*, it is stated that Jacob did not touch Bilhah again; and in *Jubilees* it is also specified that Jacob did not touch her again because Reuben had uncovered his father's skirt, attesting to anachronistic legal knowledge. However, *Jub.* 33:15–17 adds that Reuben's crime was to sleep with Bilhah while Jacob was still alive, but that the law had not yet been revealed. This is interesting because not only does *Jubilees* accept that Reuben's lack of knowledge about Mosaic laws to come constitute mitigating circumstances (and is inconsistent with Jacob's final response), but also the legal reference to the prohibition on having relations with the stepmother while the father is alive is specified in ANE law only, not in the biblical codes.

The Mosaic laws against apparent incest by proxy (“uncovering the father's skirt” by sleeping with the stepmother) seems to extend to a prohibition on

homosexuality by proxy, as reflected in Deut. 24:1-4. This law suggests that a former husband may be polluted by his ex-wife's second husband, if he remarries her, even when she has been widowed by husband number two. (In our literary-legal paradigm, it may be argued that the audience was aware that this law was contravened by David in 2 Sam. 3:12-16. Such an interpretation would add an extra dynamic to the scene of Paltiel crying after Michal as she is being led away. Accordingly, it is possible that Deut. 24:1-4 is an invented law for literary impact. Note that 2 Sam. 6:23 may suggest that David did not have sex with Michal after taking her away from her second husband, and thus probably did not contravene Deut. 24:1-4.) In contrast, ANE law does not have a prohibition on homosexuality (other than father-son, under the incest proscription, HL 190), and neither are there any laws preventing a man from remarrying his former wife after she has had a second husband.

If we examine Gen. 35:22 contextually with the narrative, Reuben's motives should be weighed in terms of his character. It may be argued that that Reuben's efforts to save Joseph in Genesis 37 and his appearance in the sexually laden mandrake scene (Gen. 30:14-16) set him up in the literary-legal framework as a compassionate person and a son who knew of the difficult sexual politics of his father's house. The saving of Joseph shows that of all the brothers, Reuben had a heart. Legally there is another subtext since Joseph, firstborn son of the loved wife, was Reuben's rival for his inheritance. It is not inconsistent with Reuben's character to suggest that he may have wished to rescue Bilhah from Jacob, thereby freeing her from performing intimate duties after her mistress had died (Lev. 19:20; 25:44-46), but this theory would presume anachronistic knowledge of the Mosaic law against incest. Since the text does not state that Reuben raped Bilhah, the situation may have been consensual (although in *Testament of Reuben* and *Jubilees*, Bilhah is raped by Reuben while she is asleep after Reuben has been aroused by the sight of her bathing).

#### PRIMOGENITURE AND SEXUAL TRANSGRESSION AS A LEGAL-LITERARY CATALYST

In sum, for the discourse on Gen. 35:22, the intersection of biblical narrative and law would mean that the audiences perceived that the various legal codes were implicit in certain scenes in Genesis. Since Reuben loses his inheritance rights because of his union with Bilhah (Gen. 49:4; 1 Chron. 5:1-2), it would appear that biblical laws were put into practice anachronistically. The Chronicler attributes the biblical prohibition of uncovering the father's skirt,

Lev. 18:8; 20:11; and Deut. 22:30; 23:1; 27:20, a euphemism for father-son incest (Phillips 2002, 245–50), as the reason for the loss of Reuben’s inheritance. Conversely, Reuben’s actions possibly would be permissible in biblical law (Lev. 19:20) and in the Hittite legal codes (HL 194) if Bilhah did not yet have the status of a free woman; and according to HL191, if she were free, because Jacob was in another land.

The audience, according to the legal-literary paradigm, may also have been familiar with the epic biblical theme of the younger taking the birthright of the older. Until this point, the loss of primogeniture was caused by murder (Cain and Abel), banishment (Ishmael and Isaac), or trickery (Esau and Jacob). The audience could have anticipated that something would happen to Reuben, the firstborn in the next generation. Yet no one killed Reuben, or displaced him, or tricked him out of his inheritance. The twist in Reuben’s birthright was that he was the eldest son of the hated wife (Deut. 21:15–17), a law that was probably redacted or composed at the same time as Gen. 35:22 to work with the Genesis story, and I suggest that Reuben did not want such an inheritance. I posit that he ensured that his double portion would be transferred to Joseph, the eldest son of the favored wife, the rival wife. Thus Lev. 18:18 is the foundation of Deut. 21:15–17 and the background to Gen. 35:22. The narrative twist and drama completely intertwines with purpose-made biblical legal codes such as Lev. 19:20, and law codes that permitted such a liaison. The beauty of this drama is that due to the plethora of laws and the sympathetic appearance of Reuben in the narrative in relation to his family, there are many interpretations. An unwritten law is that each generation must see a loss of primogeniture; it is my submission that this was Reuben’s method.

### JUDAH AND TAMAR

In the same group of Hittite laws on sexual prohibitions and permission, HL 193ab states: “If a man has a wife, and the man dies, his brother shall take his widow as wife. If the brother dies, his father shall take her. . . . [HL 193c: When afterwards his father dies, his brother shall take the woman that he had]” (Roth 1997: 236).” That is an outline of the plot in Genesis 38 about Judah and Tamar. The biblical author poses the question of what is acceptable: should Levirate marriage really be permissible even where diagonal, cross-generational incest is involved?

The biblical law repudiates the Hittite law and, thereby, Judah’s sexual encounter with Tamar (Gen. 38:16, 18).

- Lev. 18:15: “Do not uncover the nakedness of your daughter in law; she is your son’s wife, you shall not uncover her nakedness.”
- Lev. 20:12: “If a man lies with his daughter in law, both of them shall be put to death; they have committed incest, their blood guilt is upon them.

In addition, Tamar commits the crime of being a cult prostitute (for an alternative view, see Westenholz 1989), contravening Deut. 23:18. However, like Jacob’s wedding night with Leah, Judah consorted with Tamar as a result of her being in disguise; hence, there were apparent extenuating circumstances for breaking the law. Genesis 38 condones this Levirate situation: Perez, Judah and Tamar’s firstborn twin who usurped his brother in the womb, becomes the ancestor of David (Ruth 4:18), also through another Levirate marriage instigated by the widow Ruth. The crime of Judah—father-son incest through his daughter-in-law—is the mirror image of Reuben’s son-father incest through his father’s wife. Hence, circumstances are more important than the laws themselves, each case being judged on its merit.

Aside from the legal mirroring, there is a literary form-critical connection between the stories of Judah in Genesis 38 and Reuben. In the narrative, we learn of Reuben’s unspoken intentions in Gen. 37:22d: he intends to return to the pit to rescue Joseph. Similarly, in Genesis 38 we hear Judah’s thoughts as he schemes to keep Tamar from marrying Shelah (Gen. 38:11c). By contrast, Reuben saves Joseph; Judah sells Joseph, but Deut. 24:7, which views such a sale as a capital offense, is buried by the narrative.

There may be a didactic element to the number of laws created and broken in the Jacob-Reuben-Judah epicycle that are possibly associated with what seems to be a likely structural and intellectual link connecting the group of Hittite legal codes HL 190, 191, 193, 194; Lev. 18:15, 17, 18; and chapters 29, 30, 32, and 38 in Genesis. It is still possible to follow the story in its own right, as well as its echoes in Ruth, without being familiar with the possible influence of ANE laws on these narratives. This, I argue, is not so much the case with the storylines of Hagar and Ishmael.

#### HAGAR AND ISHMAEL

The story of Sarai/Sarah and Hagar may be a dramatization of several early Mesopotamian laws governing the relationship between the primary wife and the second, slave wife when the latter has a child before the primary wife. The legal documentary corpus includes inheritance laws in these situations, and the laws of adopting the slave’s children for inheritance purposes. Corresponding

laws in the Bible are absent, possibly because the relevant stories in Genesis are set in a bygone time and the practice of surrogacy had ceased.

In the Laws of Hammurabi, the preferred heir is the son of the first-ranking wife, and he has the right to choose his share before the children of a slave wife, even when the latter's children were adopted by the father (LH 170: Roth 1997: 113–14). Hagar's son was not Sarai's son, having been promised to Abram and Hagar separately in different annunciations (Gen. 15:18–21; 16:10–12; Frymer-Kensky 2002: 231–232). Ishmael's name was given by an angel (Gen. 16:11d) or by Abram (Gen. 16:15, according to redactions), not by Sarai, in contrast to the naming of Bilhah's and Zilpah's children by Rachel and Leah.

The harsh treatment meted out to Hagar by Sarai (Gen. 16:6b, 9) because she felt diminished in Hagar's eyes (Gen. 16:5) may have been drawn from LH 146 (Roth 1997: 109) as a source of inspiration. In this law, if a wife is a temple devotee not permitted to bear children (*nadītu*) (Roth 1997: 271; Seri 2011: 51n2) and the purchased slave wife aspires to equal status with the primary wife after she has borne children, the mistress “shall place upon her the slave-hairlock and she shall reckon her with the slave women.”

Laws governing the fleeing of slaves, whether or not due to harsh treatment by their mistresses in particular, is well documented in ANE law (Seri 2011: 61); for example, in LH 15–20 (Roth 2011: 84–85), and reflected in the Bible (Gen. 16:6–9). From the literary viewpoint, the first conflict between Sarai and Hagar before Isaac is born (Genesis 16) gives the point of view of both women; Hagar's plight is presented sympathetically.

Documents from the practice of Nuzi Akkadian law on adoption<sup>7</sup> describe contracts that protect the second wife's children from being sent away by the primary wife (Meek 1992: 168–69). Sarah explicitly contravenes this code because she does not want Ishmael to be an heir with Isaac (Gen. 21:10). Such a conflict appears to be reflected in a letter from the Old Babylonian period (Seri 2011: 56; Veenhof 2005: 189). This text contains the line, “A father with sons does not adopt his slave son.” Seri suggests the reference may allude to the fact that “the slave son whom the father in our letter adopted was born to a domestic slave who was the master's concubine.” If so, one may infer that these resentments constituted real human dramas and provided the stuff of literature.

It may have been more common for the arrangement to work. There are ANE documents showing the opposite case: a papyrus record from Thebes during the later Egyptian New Kingdom period (twentieth dynasty, ca. 1104–1075 BCE) details that a man adopted his second wife as his daughter so that she could inherit his estate. After his death, she left the entire inheritance to the three children of the slave woman, two girls and a boy, presumed to

have been fathered by her husband, by adopting them as well as the husband of the elder daughter, her own brother. She also emancipated them (Ashmolean Museum, AN1945.96).

Not only is it clear that women in Egypt were allowed to own and distribute property, but here Sarah certainly wields some power and influence over the matter of who should inherit Abraham's estate. In ancient Mesopotamia, if the slave wife's son was adopted by the husband, he was a joint heir with the primary wife's son, who had the privilege of taking first choice of the inheritance (LH 170: Roth 1997: 113–14). It is evident that Abraham had adopted Ishmael and that it was the intention that he would be an heir (Gen. 16:2), as the narrator refers to Ishmael as Abraham's recognized son (albeit not Sarai/Sarah's, 16:15; 21:11), a legal requirement for adoption and inheritance purposes (LH 170). If the father did not call his slave wife's offspring "My children"—that is, adopt them—those children were not entitled to a share of the estate (LH 171).

Where the slave's son is not adopted by the father in the Laws of Hammurabi, the primary wife's son becomes the rightful heir over the slave wife's son and the slave woman and her children are freed (LL<sup>8</sup> 25: Roth 1997: 31; LH 171: Roth 1997: 114). This rule may be reflected in the narrative of Hagar and Ishmael's release into the wilderness (Gen. 21:14). Although the legal-literary theory is speculative, we may hypothesize that audiences likely realized these legal customs were being referenced. This background knowledge adds depth to the narrative. As in the ANE codes, the slave women in the biblical narratives are servants of the mistress, not her husband; and it is their mistresses who control the slaves' conjugal situation. Also, as in the ANE codes, the children of the slaves such as those in the biblical stories can be adopted by the husband to share in the inheritance of his estate.

The significance of divine intervention in absolving Sarah of wrongdoing for Ishmael's disinheritance (Gen. 21:12) becomes meaningful: Sarah was asking for a situation that would mean a break of contract or established law. It would also appear that God was involved in a forced un-adoption of Ishmael so that Isaac was the sole heir, in accordance with Sarah's wishes. In this way, Hagar and Ishmael could be freed and Ishmael disinherited (Gen. 21:14; LH 171). The un-adoption of Ishmael may be evident in Abraham's distress in that the matter concerned "his son" (Gen. 21:11), but God assures him that his bloodline will continue through both Isaac and Ishmael (Gen. 21:12–13).

The scene of the Akedah in Genesis 22 underlines the idea that Abraham's faith is being tested, as he loses his first heir by un-adoption and is about to lose his next firstborn by his primary wife by sacrifice, in contrast to the promise of

Gen. 12:2. Isaac is described by God as Abraham's only son (Gen. 22:2, 12, 16); this is legally correct, since Ishmael would not inherit. Technically, Isaac has become Abraham's only heir, not his sole biological son. Without the familiarity of complex ANE adoption laws, these difficult scenes lose their underlying Mesopotamian references. The legal aspect is woven here with the literary text, which highlights Sarah's attitude, and feelings, toward the arrangement that Abraham had with Hagar.

Aside from the Nuzi law described, where the son of a surrogate mother is adopted when the primary wife is barren, the ANE laws do not distinguish inheritance rights between cases where the primary wife already has children (Leah: Gen. 29:32-35) before slave wives also bear offspring (Gen. 30:3-13), or after the slave wives bear children. In the biblical narrative, as in ANE law, the sons of the primary wives are the preferred heirs: for example, Gen. 35: 23-26 lists the sons in order of their mothers: Leah, Rachel, Bilhah, and Zilpah (see Jackson 2007: 48 n. 39).

In sum, the references to ANE law codes in the narratives of Hagar and Ishmael come from a variety of sources. Akkadian Nuzi law protects the son born to a surrogate mother, who is the rightful heir, from being sent away by the primary wife. Sarah breaches this law explicitly because she does not want Ishmael to share the inheritance with Isaac. It is likely that these scenes showed that her actions were unlawful, even though the feelings of both women are described by the writer; these are the elements of all good character drama. Abraham is distressed by the outcomes, as he has clearly adopted Ishmael. His humane response, showing his character, reveals that the situation is extremely uncomfortable for him. The literature and the underlying legal references work together to maintain the theme of the overturning of primogeniture. In LH 170, the son of the first-ranking wife is the preferred heir and takes his share first, but the estate is divided equally between the primary wife's son and the slave wife's son if the father has called the slave wives' children "My Son." This legal situation has developed in the narrative and becomes a problem for Sarai/Sarah; her tension is resolved by a contravention of law, an action that is supported by God.

## CONCLUSION

It has been found that the narratives on sexually transgressive behavior in Genesis are mirrored in a group of relevant ANE laws and corresponding biblical laws (supporting the theses of Welch and Berman, mentioned above). I have further postulated that some biblical laws were actually created to work with these stories as part of the fiction, possibly authored at the same time,

or consciously redacted, thereby adding another dimension to the scenes concerned. In some cases, particularly the case of Reuben and Bilhah, the intersection of ANE laws and biblical legislation make for a labyrinthine puzzle. My hypothesis posits not only that the biblical law codes are implicit in the narratives but also that literary characterization must also be considered in relation to the plethora of ANE legislation, contracts, and the way actual written laws affected people's lives—all rich material for drama.

The issue of the reversal of primogeniture, and sexual transgression as a means of manipulating the inheritance line, is illustrated with Reuben and Bilhah, and Judah and Tamar. These underlying themes are a central force driving the story lines forward within the long-term epic through the generations. By contrast, classical Greek drama, which may also use law as a centripetal force in the story lines, is more self-contained. In the case of Hagar and Ishmael, we should presume that the audience would be aware of the role of relevant ANE codes on slave wives in the narrative.

Without modern interpreters' aligning knowledge of ancient legal texts with the biblical narratives, the story lines lose their dramatic impact, significant layers of meaning, and possible legal and societal implications. The unfolding dramatic irony and literary conceit within some trajectories in Genesis—involving a supposed lack of anachronistic knowledge on the part of the players—not only segues with internal, literary narrative patterns, but also involves a relationship with external foreign law codes, biblical laws, and creatively revised ANE laws that loop back into the narrative. Once all these textual layers are appreciated in an interactive sense, the stories concerning the slave wives take on a different light.

## EPILOGUE

I have suggested in this essay that Deut. 24:1–4 may be read as a theatrical piece of legislation that heightens the dramatic subtext in the David cycle. It has been used and continues to be used today as a law in rabbinical Judaism to prohibit a woman from filing for divorce. The phrase in question is in Deut. 24:1d, “and he writes a bill of divorcement and puts it into her hand and sends her from his house.” This incidental piece of information in the legislation of Deut. 24:1–4 is interpreted to mean that only a husband can file for divorce, not the wife. In practice, that has meant that where a marriage breaks down and the man refuses to give his wife a bill of divorce, she becomes a “chained wife” (Heb. *‘agunah*). The chained wife's second sexual union, if effected before the first husband agrees to a divorce, is in rabbinical law an adulterous union, and the children

from that union and their descendants are *mamzerim*. They have a lower status in the community and cannot marry in a synagogue. The incompatible gap between biblical law and literature and institutional theology is a living issue today. And this is but one example.

The well-known rabbi mentioned in the prologue to this essay has said at another meeting I attended that the law on the “chained wife” cannot be changed because it emanates from the word of God. Yet all the biblical passages mentioned here involve different narratives of legal contraventions, circumventions, and redemption. The idea that institutional modern religion can adopt a brutal interpretation of an incidental phrase within a possibly fictitious and spurious Deuteronomic law, create a rule out of it, and implement it in such a fixed way so as to not leave any maneuver for a loophole whatsoever, appears to be in stark contrast to the practice of biblical case law on conjugal relationships, which is anything but straightforward.

## Notes

1. The Laws of Hammurabi (LH) were compiled ca. 1750 BCE and were repeatedly copied over the centuries in Mesopotamian scribal centers. The references to these codes are from Roth 1997: 76–142. Background and description: Roth 1997: 71–76; Tetlow 2004: 53–72. For a comparative description of this law code with the other Mesopotamian codes, earlier and later, see Tetlow 2004: 205–20. Website for the Code of Hammurabi, translated by L. W. King (early twentieth century): <http://www.ancienttexts.org/library/mesopotamian/hammurabi.html> (retrieved March 6, 2012). I am grateful to Athalya Brenner and Sandra Jacobs for some useful references used in this article.

2. The earliest copies of the Hittite Laws (HL) date to the Old Hittite period (ca. 1650–1500 BCE), from their capital Hattusha, in present-day Turkey, and copies were made until 1150 BCE (Roth 2007: 217–47; translated and introduced by Harry A. Hoffner Jr., 215–17). Further commentary and summary: Tetlow 2004: 178–88.

3. A day after I put forward these observations at the ISBL session in London, July 2010, two papers were given in the SBL Biblical and Ancient Near Eastern and Biblical Law section expressing a similar theory. These were “A Structural Comparison of Hittite Laws 187–200, Leviticus 18:6–23, and Leviticus 20: 1–21,” by J. W. Welch of Brigham Young University; and “Law Code as Story Line: Deuteronomy 24:16–25:10 and LH 1–5 as Literary Templates in Biblical and Mesopotamian Tradition,” by J. Berman of Bar Ilan University. Also see Berman 2007: 22–38.

4. Plato, *Laws* 8.838A–B (Bury 1926; see also Ostwald 2009: 151).

5. The plotline of a woman having her husband killed apparently to be with her lover is a recurrent story in modern film, for example, *Double Indemnity*, *The Postman Never Rings Twice*, *Body Heat*, *The Last Seduction*, all with a final twist.

6. Translation: my modification of *JPS Hebrew–English Tanakh* (Philadelphia: Jewish Publication Society, 2003).

7. See Pritchard 1969: 219–20. Nuzi (formerly Gasur near Kirkuk) in northern Mesopotamia was taken over by the Hurrians in ca. 1800 BCE, and they changed its name to Nuzi. The tablets date from the middle of the second millennium BCE (Roux 1992: 234–35; Meek 1992, 167).

8. The Laws of Lipit-Ishtar (ca. 1930 BCE) were mainly found in Nippur in Lower Mesopotamia, as well as in Kish (Roth 1997: 24); translations: Roth 1997: 24–35; background: Tetlow 2004: 15–18.