

# **Slave wives and transgressive unions in biblical and ancient Near East laws and literature**

Helen R. Jacobus

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## *Introduction*

This paper offers support for the hypothesis biblical narratives were composed in the knowledge that audiences were familiar with different ancient Near East law codes.

Furthermore, this essay suggests that much of the drama in the Bible is created by main characters breaking biblical and ancient Near East laws and that the audiences would be aware that such frissons existed in the text. Without modern interpreters aligning knowledge of ancient legal texts with the biblical narratives, the storylines lose their dramatic impact, significant layers of meaning, and possible legal and societal implications. The chronological dramatic irony within some trajectories in Genesis not only have their own internal, narrative patterns, but clearly have a relationship with laws from Sinai which postdate the characters' actions and choices, as well as proscriptive ancient Near East laws that antedate these ancestors, or are contemporaneous with them. Furthermore, the behaviour of many main characters contravene ancient Near East laws that are not replicated or echoed in the Bible, and vice versa.

The central story analysed in this essay is that of Reuben and Bilhah (Gen 35:22) with reference to Judah and Tamar (Gen 38), and Sarah and Hagar (and Abraham and Ishmael and Isaac) (Gen 16-18:5; 21:1-21; 22: 2, 6-7, 10, 16). I am suggesting that some biblical drama is created by deliberate, highly intricate paradoxes, the lacunae in the biblical laws, the bridges from one law code to another, and the ambiguity about which laws are being referenced and criss-crossed in the text. It is here argued that 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 transgressive nature of some of these stories, which I argue illuminates known moral law codes, and, conversely serves to highlight the lack of biblical laws concerning slave wives. This is in clear contrast to their presence in the biblical stories and the subject in ancient Near East laws.

Furthermore, by introducing what I believe is a new paradigm: an audience-aware "legal-literary framework," which can be used to analyse these scenes, an alternative, integrated interpretation and perspective will be offered to existing scholarly views.

*The function of legal-literary readings: an overview*

By analysing the interaction between the storylines and the law codes, this essay calls for a holistic approach to reading biblical texts, the “legal-literary context.” Characters’ actions and the laws that they breach, question, and obey from Leviticus, Deuteronomy or Exodus, or the Laws of Hammurabi’s (LH), or the Hittite Laws (HL),<sup>1</sup> for example, are fully part of a rich multi-layered drama in which each stratum interacts with the other, bringing a different texture to be explored and fitted into the whole. Among contemporary playwrights there are two dicta for writing effective plots, these are: “character is action” and “conflict is drama.” In the biblical stories discussed here, “character is action,” where the action transgresses a law, thereby throwing a more complex light onto the individual’s self in relation to the legal rules of his, or her, society. “Conflict is drama,” where drama involves the reaction to the action that contravened a legal code, and where characters are affected in some way by the consequences. Laws and characters and actions in the narratives highlighted here are not separate but intertwined, and it is understood that audiences would use this knowledge to second-guess the path the story-line must take.

They were also possibly aware of the literary conceit that the legal dilemmas in their situations concerned codes that supposedly didn’t exist before Moses, as shall be discussed. Human psychology and feelings seem to play less of a role as source of motivation, and character development in the stories, compared with Greek mythology and drama. One of the differences between the use of transgressive familial laws and taboos in classical myths and plays, is that classical dramatists may have been more interested in employing these laws, which are so powerfully dramatic when performed, as a tool to uncover the psychology of mythological *dramatis personae*, such as, Oedipus, Electra and Phaedra. The characters’ emotions propel them on a journey of personal, inner change in order, perhaps, to effect tragedy. In the Bible, the thread of authorial interest in the literary re-enactment of law codes revolves around longitudinal inheritance, birthing future generations, and competing for the status of ancestry of the sacred genealogy of David. The audience must work out which laws are being broken and the consequences for different branches of various family trees over time.

I suggest that some of the biblical laws, may actually have been revisions of ancient Near East laws to appear to be retrospectively connected with biblical narratives. If so, this would create a web of dramatic irony within the literary-legal context. For instance, Lev

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<sup>1</sup> References to law codes from Roth, 1997, and Pritchard, 1969 (PB, 1992).

18:18 (a law given to Moses) is a succinct and interestingly-worded prohibition on marrying the sister of one's wife as a rival-wife, a *tseror*, (BDB, 865) to the first wife in her life-time. This would appear to be a reference the palpable unhappiness of Leah, while her sister was the favourite wife (Gen 29:30 ab, 31-33; 30:15). It may be a derivation on the extant Hittite prohibition on marrying two sisters where both live in the same place (HL 191b, Roth 1997, 236); hence, the potential for jealousy is greater than if they resided in different places. The arrangement is also permitted after one sister has died (HL 192, Roth 1997, 236; so Lev 18:18). It is true that it may be coincidence that this pared-down Hittite law appears to be dramatised in Gen 29 and Gen 30.

However, possible evidence that law also belongs to the "legal-literary" context, rather than simply being a biblical revision of a Hittite law is the echo of a similar coincidence in Deut 21:15-17. This rule appears to specifically refer to the inheritance rights of Reuben, also discussed below, a law tailored to give a double-portion to the first-born son of the hated wife. In particular, Deut 21:17 seems to assume that the first-born son of the unloved wife is the father's "first fruit of his strength," *reshit onow*. This is a word-play on *Reuben* and correlative with a direct verbal reference to him by Jacob when he revokes these rights (Westbrook, 1991, 136)<sup>2</sup> to Reuben ("first fruit of my strength, *reshit oni*) on his deathbed in Gen 49:3b (paralleling "Reuben you are my first-born" in Gen 49:3a).

Deut 21: 15-17 a may be an adaptation of the pre-existing Laws of Hammurabi (LH 170, Roth 1997, 113-4), in which the preferred heir is the son of the first-ranking wife and has the right to choose his share before the children of a slave-wife even where the latter's children were adopted by the father. Using the legal-literary paradigm, I shall argue that Reuben deliberately forfeited his right to a double portion, as the eldest son of the hated wife, and 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, who consequently receives the double portion as the first born of the loved wife (Gen 49: 26), is in many ways far more complex psychologically, even if not the literary tour de force of the Joseph cycle.

Ancient Near East laws protected a son from being totally disinherited unduly: he must commit a serious offence, not once but twice, to be so treated (LH 168-169; Roth 1997, 113). Biblical law says nothing about offences that would be punishable by disinheritance, or loss of the right of the preferred heir, or the double portion. The amalgamation of biblical

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<sup>2</sup> Westbrook refers to Deut 22: 15-17, which is an error.

laws and situations, balancing and relating them to analogous ancient Near East laws and biblical narratives, is of course prevalent throughout the Bible (see for example, Brenner 1996, 129-131). The variations on these laws and omissions are of interest.

There is an absence of biblical laws tailored to situations where household slaves are specifically used for procreation purposes where the wife cannot bear children (the cases of Hagar {Gen 16:2-3} and Bilhah {Gen 30: 3-8}). A similar situation is described in Nuzi Akkadian law (Meek, 168-9),<sup>3</sup> a law which protects the surrogate mother and her children, who are rightful heirs: the children cannot be sent away by the primary wife—a law which Sarah breached explicitly because she did not want Ishmael to be an heir with Isaac (Gen 21:10). In the Laws of Hammurabi, the wife's son becomes the rightful heir over the slave-wife's son (where the offspring is not adopted by the father) and the slave-woman and her children are freed (LL 25, Roth 1997, 31; LH 171, Roth 1997, 114). This law may be reflected in the narrative of Hagar's and Ishmael's release into the wilderness (Gen 21:14).

However, if the slave wife's son is adopted by the father, he is a joint heir with the primary wife's son, and the latter has the privilege of taking first choice of the inheritance (LH 170, Roth 1997, 113-114). It is clear that Abraham had adopted Ishmael and that this was the intention (Gen 16:2) as the narrator refers to Ishmael as Abraham's recognised son (Gen 16:15; 21: 9-11), a legal requirement for adoption and inheritance purposes (LH 170, op.cit). If the father did not call his slave-wife's offspring "My children," that is, adopt them, those children are not entitled to a share of the estate (LH 171, op.cit).

It is unlikely that audiences did not realise that these legal customs were being referenced by Sarah, and hence, the significance of Divine intervention in absolving Sarah of wrong-doing for Ishmael's disinheritance (Gen 21:12). It also would appear that the *Deus ex machina* involved a forced un-adoption of Ishmael. In this way Hagar and Ishmael could be freed and Ishmael is disinherited (Gen 21:14; LH 171, op.cit). The forced un-adoption of Ishmael may be evident in Abraham's distress in that the matter concerned "his son" (Gen 21: 11) and God tells Abraham that his line will continue through Isaac only (Gen 21: 12). The scene in Gen 22, of the *Akedah*, then underlines the idea that Abraham's faith is being tested, as he loses one son and is about to lose another in contrast to the promise of Gen 12.2. Isaac is described by God as Abraham's only son (Gen 22:2, 12, 16); Ishmael is Abraham's disinherited son by heavenly design, not due to any actions by Ishmael on earth. Without the

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<sup>3</sup> See Pritchard, ANET 219-220

familiarity of ancient Near East adoption laws, these difficult scenes lose their underlying references.

Aside from the Nuzi law described, where the son of a surrogate mother is adopted when the primary wife is barren, the ancient Near East 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 act as surrogates. The sons of the primary wives are the preferred heirs, a situation reflected in the biblical narratives, though not the laws: Gen 35: 23-26 lists the sons in order of their mothers: Leah, Rachel, Bilhah and Zilpah.<sup>4</sup> The silence of biblical law on all aspects of these matters (slave wives, inheritance and disinheritance) in contrast to ancient Near East laws, may have served as inspiration for the biblical stories, creation of biblical laws and the legal and literary puzzles they present. I shall now discuss further the issue of primogeniture and sexual transgression in the chosen narratives, to illustrate this theme as a central force driving the storylines forward, and the prevalence of these juxtapositions in biblical and ancient Near East law codes.

#### *Primogeniture and sexual transgression as a legal-literary catalyst*

The intersection of biblical narrative and law would mean that the audiences perceived that that the various legal codes were implicit in the certain scenes in Genesis, and that biblical laws had been applied backwards in time. Since Reuben loses his inheritance rights for his transgressive union with Bilhah (Gen 49.4, 1 Chron 5:1-2) it would appear that biblical laws were put into practise anachronistically. The Chronicler attributes the biblical prohibition of uncovering the father's skirt, Lev 18:8, Lev 20:11, Deut 22:30, Deut 23:1, Deut 27:20, a euphemism for father-son incest (Phillips 2002, 245-250), as the reason for the loss of Reuben's double portion. Therefore, audiences would have understood that Jacob was punishing his eldest son and that the laws from Sinai were already in situ.

Here, biblical law differs from Hittite law codes which permit father and son to have intercourse (that is, rape) with the same slave-woman or prostitute (HL 194, Roth 236) but a son is not permitted to sleep with his stepmother while the father is alive (HL 190, Roth 236). So, was Bilhah a stepmother (Lev 18:8, Deut 22:30, Deut 23: 1, Deut 27:20), or a slave-wife (Lev 19:20, Lev 25:44) or, as both—the mother of his brothers but through her freewill—

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<sup>4</sup> Zilpah's descendants follow those of Leah's, and Bilhah's follow Rachel's in Gen 46:8-19, as noted by Jackson, 2007, 48 n.39; he also comments that in Deut 27:12-13, the tribes associated with the blessing on Mount Gerizim are the sons of the primary wives and those assigned to the curse on Mount Ebal are the sons of the slave-wives, and Reuben and Zebulun (Gen 30:20).

which law applied? Did Reuben think that Rachel's death, the notice in the immediate previous periscope (Gen 35: 16-20), change Bilhah's status so that she was, henceforth, free? The fact that the report that Reuben slept with Bilhah comes in the text after Rachel's death directly raises the question of whether Bilhah had a new status. Was it a surprise to the audience that she was now described Jacob's concubine? Which laws on sexual partners did Reuben transgress, exactly?

According to Carmichael, Reuben was transgressing a prohibition on sleeping with his stepmother, Deut 22:30, hence incest, while his father was still alive (Carmichael 1985, 221-223). If Bilhah's status was that of a slave in perpetuity, she would be passed from father to son as a piece of property to be inherited (Lev 25:44). If so, the transgression in biblical law would be sleeping with Bilhah in Jacob's life-time. According to Falk, a *pilegesh* (Gen 35: 22) could leave her husband without his consent (Falk 1964, 127 n.4 [ref. Judg 19]), but as an *amah* used as a surrogate (Gen 30: 3-4), she had no rights (Jackson 2007, 46-50).

The audience, according to the legal-literary paradigm, would know the laws of (Lev 18.18 and Deut. 21.15-17), and the biblical narrative rule of the younger taking the birthright of the older by murder or through a third party (until this, point Cain and Abel; God, Ishmael and Isaac; and Rebecca, Esau and Jacob). They would be watching Reuben and his brothers to see what transpired. But no-one killed Reuben, stole or removed his inheritance, or gave him a secondary status. The twist in Reuben's birthright was that he was the eldest son of the hated wife and, I suggest, that he 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 favoured wife. Each generation sees a loss of primogeniture. This was Reuben's method.

*Reuben and Bilhah: internal narrative implications*

The question whether Reuben raped Bilhah.

The question of saving Joseph's life in Gen 37; collecting mandrakes Gen 30: 14-18

*Reuben and Bilhah: external narrative implications*

The question whether he has been "whitewashed"

Reception history in Pseudepigrapha

*Judah and Tamar.*

Also diagonal generational incest.

Reception history in Pseudepigrapha

Laws on Temple prostitution

*Literary connections*

Reuben and Judah: incest connection. Joseph connection in Gen 37;

### *Authorship connections*

Reuben, Judah, Joseph, Hagar: hearing internal thoughts

### *Conclusion*

Legal-literary paradigm means we can see that laws take on their own existence in the text. They become characters. Interlinked pockets of legal-literary scenes. Absence of biblical laws on slave wives are highlighted.

Same diagonal intergenerational intercourse: Reuben loses birthright but Judah becomes the ancestor of kings: same, hated mother. Need literary considerations not just legal ones.

Legal-literary framework also helps us to understand the Ishmael story. Way to approach some of the Bible's difficult narratives. Outstanding question is the Bible's laws' silence on the rights of slave wives, reflecting their muteness.

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