

*The Daughter Sold Into Slavery and Marriage*

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The Book of the Covenant holds that a male slave is to be freed after six years of servitude while the female slave is not to be released.(Exod 21:2-11) This inequity has been an enigma for millennia, and perhaps it was so even in biblical times, since Deut 15:12-18 pointedly revises the passage so that both male and female slaves are to be released in the seventh year. The passage in the Book of the Covenant appears to be aimed at providing the female slave with protection of a marital relationship, but the proviso that she is to be released if her purchaser withholds her maintenance could be manipulated by a malicious purchaser. He could free himself of her if he intentionally denies what she is due, and then the protections afforded her by the statute would be undermined and negated. A further enigma is that although the daughter is forced into servitude, her status could be reversed: she would remain a slave if her purchaser was her sexual partner, but she would enjoy a return to free status if she were intended for his son. To understand how these conundrums developed, we must take into account how the sale of a daughter epitomizes the status of men and women and the nature of marriage and divorce in the Hebrew Bible.

*The Daughter Sold Into Slavery for Marriage*

The passage on the daughter sold into slavery addresses the case of a family in economic straits, one that cannot provide a dowry for a daughter,<sup>1</sup> and in so doing, it opens a window on

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<sup>1</sup>It must be noted that the family's basic problem may have been its general debts, rather than for the lack of funds at the specific point in time that a daughter would require a dowry. The family's presenting problem was that its poverty, whatsoever the cause, forced sons and daughters to be subjected to slavery, as in the situation recounted in Neh 5:1-5. However, a daughter's value resided in her use in sexual intimacy and the bearing of progeny more than her labor, and it may

the life of an average Israelite.<sup>2</sup> Otherwise, the women portrayed in the Bible are exceptional: they are spouses or descendants of celebrated men, they are women who rose to prominence, or they were the subject of a tragedy.<sup>3</sup> The case of a daughter sold into slavery appears to be an unexceptional event, even though it occurs to a family that cannot take care of a daughter's marriage through the normal process of marriage. The daughter is in a less favorable position and

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be for this reason the people appealing to Nehemiah stated that their daughters have already been enslaved (rather than their sons). See Phyllis A. Bird, "Poor Man or Poor Woman? Gendering the Poor in Prophetic Texts," in *Missing Persons and Mistaken Identities: Women and Gender in Ancient Israel* (Overtures to Biblical Theology; Minneapolis: Fortress Press, 1997 <1996>), 74-75.

<sup>2</sup>It is not clear what relationship the legal texts of the Bible had to law as practiced in Ancient Israel. Were the legal texts a mirror of what actually occurred? Were they meant as amendments of the law that was put into practice? Or were they purely theoretical? Whose viewpoint do they manifest, whether in terms of geography (the entirety of Ancient Israel, the southern or northern kingdoms, or a limited locality), or in terms of socio-economic class or religious circle? In the absence of inscriptions recording legal activity from Ancient Israel, answering these questions may be hopeless. (There are only two inscriptions that appear to deal with legal matters. A letter written on a potsherd, the Yavneh Yam or Meşad Hashavyahu letter, records a laborer appealing to an administrator over the confiscation of his garment [Shmuel Ahituv, *Echoes from the Past: Hebrew and Cognate Inscriptions from the Biblical Period* (Jerusalem: Carta, 2008), 156-163], and a text expressing concern for those marginalized in society has been excavated from Khirbet Qeiyafa [Bob Becking and Paul Sanders, "Plead for the Poor and the Widow: The Ostrakon from Khirbet Qeiyafa as an Expression of Social Consciousness," *ZAR* 17 (2011), 133-148]).

The literary elite who may have written the Book of the Covenant had a social position far different from the enslaved men and women who are the subject of the passage. They may have even been the ones who were their masters. This may have consequences: on the one hand, the members of a literary elite may have a more rosy view of slavery, but on the other, their familiarity may have prompted a sharp critique of the institution of slavery. The audience for the Book of the Covenant may also have been an elite: while there is evidence for increasing literacy in Ancient Israel, it is not clear who had access to specific texts and what their characteristics were, whether in terms of literacy, gender, socio-economic class, religious elite, or location. (See I. Mendelsohn, "The Conditional Sale into Slavery of Free-Born Daughters in Nuzi and the Law of Ex. 21: 7-11," *JAOS* 55 [1935], 190-195)

<sup>3</sup>Bird, "Images of Women in the Old Testament," in *Missing Persons and Mistaken Identities: Women and Gender in Ancient Israel*, 13; Carol Meyers, *Rediscovering Eve: Ancient Israelite Women in Context* (Oxford University Press: Oxford, 2012), 3.

is more subject to mistreatment. It is a sad calamity of daily life, not an exemplary case.<sup>4</sup>

The rules on slavery are articulated primarily as rules on manumission, but they also address the sexual use of slaves:

- (2) כִּי תִקְנֶה עֶבֶד עִבְרִי שֵׁשׁ שָׁנִים יַעֲבֹד וּבְשִׁבְעַת יָצָא לְחֻפְשֵׁי חָנָם:  
 (3) אִם־בְּגָפוֹ יָבֵא בְּגָפוֹ יָצָא אִם־בְּעַל אִשָּׁה הוּא וְיִצְאָה אִשְׁתּוֹ עִמּוֹ:  
 (4) אִם־אֲדָנָיו יִתְּנוּ־לוֹ אִשָּׁה וְיִלְדֶּה־לוֹ בָּנִים אוֹ בָנוֹת הָאִשָּׁה וְיִלְדֶּיהָ תִּהְיֶה לְאֲדֹנָיָהּ וְהוּא יָצָא בְּגָפוֹ:  
 (5) וְאִם־אָמַר יֵאמֹר הָעֶבֶד אֶהְבֵּתִי אֶת־אֲדֹנָי אֶת־אִשְׁתִּי וְאֶת־בְּנֵי לֵא אֲצַא חֻפְשִׁי:  
 (6) וְהִגִּישׁוּ אֲדָנָיו אֶל־הָאֱלֹהִים וְהִגִּישׁוּ אֶל־הַדֹּלֶת אוֹ אֶל־הַמְּזוּזָה וְרָצַע אֲדָנָיו אֶת־אָזְנוֹ בַּמַּרְצֵעַ וַעֲבָדוּ לְעֹלָם: ס
- (7) וְכִי־יִמְכַר אִישׁ אֶת־בִּתּוֹ לְאִמָּה לֹא תִצָּא כְּצֵאת הָעֶבְדִּים:  
 (8) אִם־רָצָה בְּעֵינֵי אֲדֹנָיָהּ אִשְׁרָאֵל לֹא לֹא יֵעָדֶה וְהִפְדָּה לָעַם נָכְרִי לֹא־יִמְשַׁל לְמַכְרָהּ בְּבִגְדוֹ־כָּה:  
 (9) וְאִם לָבְנוּ יִיעָדְנָה כְּמִשְׁפַּט הַבָּנוֹת יַעֲשֶׂה לָּהּ:  
 (10) אִם אֶהְרַת יִקַּח לוֹ שְׂאֲרָה כְּסוּתָהּ וְעֲנֻתָהּ לֹא יִגְרַע:  
 (11) וְאִם־שָׁלַשׁ־אֲלָהּ לֹא יַעֲשֶׂה לָּהּ וְיִצְאָה חָנָם אִין כְּסָרִי: ס

(2) When you purchase a Hebrew slave, he shall serve six years, and in the seventh year, he shall go free without payment.

(3) If he came in by himself, he shall go out by himself.

(4) If he was married, his wife shall go out with him.

(5) If his master gave him a woman and she bore him sons or daughters, the woman and her children shall be her master's, and he shall go out by himself.

(6) If he says "I love my master, my woman, and my children, I shall not go free", his master shall lead him before God<sup>5</sup> and (then) shall lead him to the lintel and the doorposts. He will pierce his ear with an awl, and he will serve him forever.

(7) If a man sells his daughter as a maidservant, she shall not go free as the slaves do.

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<sup>4</sup>For more on the precariousness of the subsistence agrarian economy of Ancient Israel, see Roland Boer, *The Sacred Economy of Ancient Israel* (Library of Ancient Israel; Louisville: Westminster John Knox, 2015), 53-109.

<sup>5</sup>The reference to God in this verse and in 22:7-8 has been traditionally taken to refer to judges, as the Septuagint, the Peshitta, and the targumim render the verse. However, it is more likely that this refers to an oath taken at either a local sanctuary or a home shrine to prevent or resolve a dispute. It is completely omitted in the law's reshaping in Deut 15:12-18 because cult centralization, a central mission of the Deuteronomic Reform, negates the legitimacy of a local shrine, whether freestanding or in-home. (And if the term does refer to judges, then there would be no reason for Deuteronomy to have omitted the mention of judges.)

(8) If she is displeasing in the eyes of her master, who designated her for himself,<sup>6</sup> he will allow her to be redeemed. He does not have the authority to sell her to a foreign nation because he has betrayed her.

(9) If he designated her for his son, he shall treat her according to the legal status of (free) daughters.<sup>7</sup>

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<sup>6</sup>This verse has a significant textual issue. The ketiv reads אֲשֶׁר־לֹא יַעֲדָהּ, and the verses should then be rendered “If she displeases her master who has not designated her, he shall let her be redeemed”. This rendering implies that since she entered his household for sexual use, if he does not intend to use her in that way, he may not use her as a slave, and he must allow her to be redeemed. Her family obtained funds in her sale and would have to pay for her release. The qere reads אֲשֶׁר־לוֹ יַעֲדָהּ “If she displeases her master who designated her for himself, he shall let her be redeemed”. The latter reading makes more sense in light of the contrast with the corresponding rule for his son in the next verse: Exod 21:8 deals with the situation in which she is designated for the purchaser, while Exod 21:9 addresses the situation in which she is designated for the purchaser’s son. In either case, her purchaser’s jurisdiction over her as her master is restricted. The suggestion that the verse should read אֲשֶׁר־לֹא יָדָעָהּ, “If she displeases her master who did not know her (in sexual intimacy)...” also should be rejected in light of the matching cases of the purchaser and his son.

<sup>7</sup>The term כַּמְשַׁפֵּט הַבְּנוּת means that she is to be treated as a daughter, a free-born woman, as opposed to the slave status to which she was relegated upon being purchased, with the consequence that she could not be used as a slave, if there was a delay in sexual union with the son. (Shalom M. Paul, *Studies in the Book of the Covenant in Light of Cuneiform and Biblical Law* [SVT 18; Leiden: Brill, 1970], 55) The similar term in Deut 21:17, מִשְׁפַּט הַבְּכוֹרָה, refers to the legal rights of the first-born. (Carol M. Pressler, “Wives and Daughters, Bond and Free: Views of Women in the Slave Laws of Exodus 21, 2-11,” in *Gender and Law in the Hebrew Bible and the Ancient Near East* [ed. ed. V. H. Matthews, B. M. Levinson, and T. Frymer-Kensky; JSOTSup 262; Sheffield: Sheffield Academic Press, 1998], 159).

Michael Fishbane argues that Exod 21:9 is an interpolation because the referent in the following verse is to the original master, the father, not the son and that the presence of the interpolated verse is made more jarring by the cross-reference כַּמְשַׁפֵּט. (*Biblical Interpretation in Ancient Israel* [Oxford: Clarendon, 1985], 209-211) In ritual texts, כַּמְשַׁפֵּט refers to rules mentioned elsewhere in the text, rules omitted perhaps for the sake of brevity or laziness: the rules to which a reference is made are made to apply to the same item -- no need then, according to Fishbane, to repeat them. It is just a form of shorthand. By contrast, in non-ritual legal texts, Fishbane argues the cross-reference sheds new light on a situation that might arise and in essence transforms the law. A woman may be sold to a particular man by her father, and the master is obligated to fulfill his pledge to marry her. If he does not wish to marry her, she goes free because the master has breached the contract, and if he takes an additional wife, she is guaranteed maintenance. However, this is not an interpolation because this stipulation deals with her being designated to marry the master’s son in contrast to what happens to her in the case she is designated for the father: she is to be treated according to the rules pertaining to free-born women.

(10) If he takes another woman, he shall not withhold her food, clothing, or conjugal rights<sup>8</sup>.

(11) If he does not supply her with those three, she shall go free without payment.

The statutes cohere as a carefully crafted passage composed of two units, both beginning with כִּי, and employing אִם and אִם־וְ for the sub-units. The sub-units incorporate secondary cases introduced by אִם, and cases complementary to the secondary cases are introduced with אִם־וְ. A corresponding order may be discerned in the way the units are introduced “when you purchase a Hebrew slave...he will go free (אִם־וְ)”, in contrast to the specification in the unit beginning as “when a man sells his daughter as a maidservant” that (לֹא תֵצֵא כַּצֵּאת הָעֶבְדִּים) “she will not go free as the male slaves”. The repetition of key phrases cements the structural unity of the literary unit and emphasizes the correlation between the case and the remedy. The parallel language in Exod 21:2 and 7 highlights the social context of the two units of the passage: both the male and female were compelled into servitude,<sup>9</sup> and the distinguishing mark between them is their gender.<sup>10</sup>

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<sup>8</sup>Traditionally, the word עֲנָה has been understood as conjugal rights, but Shalom M. Paul suggests that this refers to oil. See Paul, “Exod. 21:10: A Threefold Maintenance Clause,” *JNES* 28 (1969): 48-51; Paul, *Studies in the Book of the Covenant*, 56-61. This maintenance item appears in Mesopotamian law collections as the right of a child’s wet-nurse (Laws of Lipit-Ishtar 32) or a prostitute who has given a man children (Laws of Lipit-Ishtar 27), not necessarily the rights of a wife, and the question is whether the intent of taking up with another woman means that she is marginalized. For a review of possible renderings, see Etan Levine, “On Exodus 21,10: ‘Onah and Biblical Marriage,’” *ZAR* 5 (1999): 133-164.

<sup>9</sup>A number of circumstances could result in enslavement. Another statute in the Book of the Covenant prescribes that a thief who could not pay the penalty for his offense would be sold into slavery for the payment.(Exod 22:2) Presumably in general an Israelite could sell himself into slavery to pay off a debt. An Israelite who was owed a debt could apprehend the debtor or the debtor’s dependents and enslave them.(2 Kings 4:1; Amos 2:6; 8:6; Isa 50:1-2; Neh 5:5)

<sup>10</sup>Many factors could affect the economic situation of a family so as to prevent the family from possessing the wherewithal to provide the funds for the marriage of a daughter. This case of a son lacking the economic means needed for marriage may have been less common because a son had a primary right to patrimonial land, allowing him to have recourse to financial resources that a daughter might not have. The case of the daughters of Zelophehad demonstrates that only in unusual circumstances did daughter obtain rights to family land.(Numbers 27)

However, the relationship between the two cases in Exod 21:2-11 is the subject of debate. Was the release in the seventh year meant to cover every Israelite, both male and female, forced into slavery and the case of the daughter sold by her father was then a special case of servitude?<sup>11</sup> Or did the release in the seventh year apply only to male Israelites and the case of the daughter sold by her father to be considered the general case of female servitude addressed in the passage? Is the daughter sold into slavery the only case of female servitude addressed in the passage? A number of scholars have argued that manumission applied only to men, because Israelite women were not full members of the covenant and therefore did not need to be restored to their original free status,<sup>12</sup> or that they could not own property and therefore could not accrue debt.<sup>13</sup> Other scholars have argued that release was voided only for daughters sold as wives and that the passage did not deal at all with female slaves who were used for household or non-sexual labor.<sup>14</sup> It may also be that emancipation after six years was intended for all slaves and that the case of the daughter sold into slavery was the limited case.

Analyzing how Exod 21:2-11 is a tightly knit literary unit with two interconnected concerns provides a solution. The passage is a set of laws providing safeguards for Israelite slaves as well as regulating the sexual use of slaves. A male slave can be used for procreation, and it would seem that the children he has with a slave-woman provided to him by his master would

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<sup>11</sup>The Septuagint follows this interpretation, reading in Exod 21:7 that οὐκ ἀπελεύσεται ὡς περ ἀποτρέχουσιν αἱ δοῦλαι, “the daughter sold into slavery will not be released as the other female slaves”.

<sup>12</sup>Anthony Phillips, “The Laws of Slavery: Exodus 21.2-11,” *JSOT* 30 (1984), 61

<sup>13</sup>Gerhard von Rad, *Deuteronomy* (trans. Dorothea Barton; OTL; Philadelphia: Westminster, 1966), 107.

<sup>14</sup>Gregory C. Chirichigno, *Debt Slavery in Israel and the Ancient Near East* (JSOT Supplement Series 141; Sheffield: JSOT Press, 1993), 244-255.

remain slaves since otherwise it makes no sense for the owner to have him procreate.<sup>15</sup> His sexual use does not change his status. However, a woman sold for sexual use becomes a permanent member of the household of the owner or his son and, therefore, she must receive certain protections of her own in place of manumission. It also must be noted that elsewhere in the Book of the Covenant, a slave is specifically denoted as both genders, with the male termed עֶבֶד and the female as אִמָּה. The statutes on a slave killed or injured apply to both עֶבֶד and אִמָּה, males and females (Exod 21:20-21, 26-27). If there is conceptual and literary coherence to the Book of the Covenant, the case of the daughter sold into slavery was the only case meant to apply to females.<sup>16</sup> It does not envision any other option for female slaves.

The economic value of a daughter sold off for marriage is her value for sexual intimacy and procreation more than her labor,<sup>17</sup> and the amelioration of slavery finds special expression in the case of the daughter sold into slavery. She was either to have a permanent relationship to her master or master's son or be redeemed,<sup>18</sup> in contrast to the male slave who was to be emancipated

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<sup>15</sup>It is safe to assume that the woman he is given is a slave herself. Bernard S. Jackson points out that it seems unlikely that an owner would give a slave a wife, a woman with whom he has a permanent formal relationship, and that the term אִשָּׁה cannot always refer to a wife because the woman is termed אִמָּה. ("The 'Institutions' of Marriage and Divorce in the Hebrew Bible," *Journal of Semitic Studies* 56 [2011], 234; *Wisdom-Laws: A Study of the Mishpatim of Exodus 21:1-22:16* [Oxford: Oxford University Press, 2006], 91) Why would the master provide him with a sexual partner? The likelihood is that the master is using him to produce children, that is, more slaves (rather than benevolently providing him with a sexual outlet). Perhaps the master's purpose is to entice him to stay in servitude with an attachment to his partner and children. The option to remain in servitude assumes that the woman and/or her children do not ever obtain manumission and that in order to be with them, he must remain a slave.

<sup>16</sup>Pressler, "Wives and Daughters, Bond and Free," 166-167

<sup>17</sup>Among the factors that would prompt a man to purchase the daughter may be that 1) purchasing her might be less expensive than the normal process undertaken for marriage; 2) his wife might be barren, and she could provide children; 3) she could provide additional children to a household that already had children; 4) the purchaser or his son might have personal characteristics that might make the usual process of marriage difficult, among other factors.

<sup>18</sup>Since the passage does not mention whether the master could give her to a slave or to another free man, it can be argued that this cannot happen to her.

after six years of servitude. This discrepancy may seem to be an inequity, but she entered slavery because her family could not provide with the funds she normally need for marriage. If she were to be freed after six years in which her sexuality could be used by her purchaser, releasing her would leave her vulnerable once again and probably worse off.

The daughter's vulnerability is protected in other ways. If the purchaser sours on her and refuses to take her in a permanent bond, the daughter sold into slavery is thereby protected by the requirement that the owner must let her be redeemed.<sup>19</sup> She cannot be sold off to a foreign country. (This attests to the existence of an international sex trade even in antiquity.) But she is not released for free: her natal family must pay for her release because she has not had sexual relations with the purchaser. After sexually intimacy (and the loss of her virginity), she needs more protection. If her purchaser takes another woman, the statute prescribes that the maintenance rights of the daughter sold into slavery are not to be diminished. But if her maintenance is withheld, she goes free without payment for her emancipation.<sup>20</sup> Because the purchaser has had sexual relations with her, he does not receive a payment. It would seem, then, that this is to her benefit.

But there is a serious defect in this proviso: a purchaser, who wants to be with another woman, could manipulate the situation and intentionally neglect to provide her with her maintenance. She is thereby deprived of the protection that she is supposed to be guaranteed. Even though she does not have to be redeemed and goes free without payment, she has been betrayed. The protection is flawed: the corrective can hurt her. It can be surmised that the

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<sup>19</sup>It is not clear who redeems her. Presumably her natal family or her father in particular is to redeem her.

<sup>20</sup>She does not receive a marriage settlement like a wife because she started out the relationship as a daughter sold into slavery. The stipulation that she can go free without payment, means that she does not have to pay him for being released, and that he does not need to give her anything.

intention of this proviso is that having to emancipate her for free might prompt her master to continue her maintenance, but he might be willing to lose her if he is sufficiently malicious.

This flaw arises because of the basic problematics arising from her status. When a daughter is sold into slavery, she occupies the status of slave. If she were designated for her purchaser, she remains a slave: she is called אמה,<sup>21</sup> not אשה, who is sold (מכר), and her purchaser is called אדון, not בעל, husband. If the purchaser is not pleased with her, he must let her be redeemed, and if he deprives her of her maintenance, she is to go free without payment. But her status is altered if she were designated for his son. She was deemed to have the same status as his daughters (and daughters-in-law) because she has a different sexual partner than her purchaser. The male slave has the option of choosing whether to stay with his master, but in the case of the female slave, the master is the one with the option of choice -- he can dislike her and allow her to be redeemed, he can decide to maintain her or be freed of her by withholding her maintenance. She does not possess an option to choose.

Her lineage's action are also restricted. In general, the members of a lineage could redeem a family member sold into slavery, but this general right was lost when she was sold for the purpose of sexual relations. It would come back into effect if the purchaser had designated her for himself but has broken faith with her. If he allocated her for his son, she gains the same status as a free wife and is treated as a free daughter-in-law would be. She does not return to the status of a slave, and it does not seem that according to this passage she can be designated for anyone other than himself or his son.

Further, the language of designation in Exod 21:8 rather than marriage indicates that she does not enjoy the status of a wife, but at which subordinate level of a sexual relationship was

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<sup>21</sup>אמה is the general term for female slave, in the Book of the Covenant (Exod 21:20-21, 26-27, 32; 23:12) and other Pentateuchal laws, except for Lev 19:20. This last statute assumes that she cannot be in a marital relationship unless she is redeemed or released and may follow the principle of H, as exemplified in Leviticus 25, that Israelites cannot be permanent slaves.

she? The term אשה is not limited to “wife”, as evident in Exod 21:4, and the only “marital” status for which there is a technical term in Biblical Hebrew is פילגש, whether it should be translated as concubine or secondary wife. Since the daughter was originally free, her rights are superior to an ordinary אמה, who can be sold abroad and for whom he did not have to provide maintenance, and it seems that if the daughter sold into slavery is designated for the purchaser’s son, she has a higher status than otherwise. It is likely that there were different ranks of legitimate sexual relationships, but in order to determine what they were, we must delve into the status of men and women and the nature of marriage.

### *The Status of Men and Women in the Hebrew Bible*

Israelite society as depicted in the Bible privileged males, especially those who act as the head of their בית אב, patrimonial joint family or lineage. Women as a general class were subordinated: gender inequity meant that real estate belonging to a lineage passed along male lines, but only to females in the absence of male heirs. But status was nuanced, and rank could be fluid. There were hierarchies that restricted men as well as women. The priesthood, for example, was restricted to a certain circle of males. Male privilege could convey rights that were greatly restricted. While patrilineal property was handed down along agnate lines, patrimonial land could not be sold outside the lineage even with this privilege. Owners were not able to convey title of their property outside of their lineage, as is possible in general with real estate in contemporary society. The preservation of patrilineal property within a lineage was crucial because land was the primary resource in ancient Israel. Male privilege existed and prevailed, but men could be greatly restricted in their rights.

Moreover, despite the general proclivity toward male privilege, ancient Israelite society was not a hierarchical society in which males dominated pervasively, at every level of society in every institution, social, economic, and political. Rather, ancient Israelite society was composed

of individuals and social units that related to each other in a variety of vertical and horizontal relationships.<sup>22</sup> Within households, women exercised significant power and authority. Female professionals, such as healers, textile-makers, wet-nurses, and mourners, operated in their vocation with a varying degrees of independence. Subordinates, whether male or female, found themselves in a dependent status because of class, age, economic means, and ethnicity. Carol Meyers observes:

Power in pre-modern communities is hardly unitary. There were multiple loci of power in Israelite society, with women as well as men shaping household and community life. The gendered spheres of life within the household, except for sexuality, can be considered complementary rather than hierarchical; men controlled certain activities and subsistence tasks, women had sole expertise and responsibility in others, and some were shared. Furthermore, the existence of female professionals means that there were women's groups with their own hierarchies and that women functioned in public roles, some of which, including mourning, midwifery, certain types of musical performances, perhaps sorcery, were largely or exclusively female. Anthropologists studying pre-modern societies who are dissatisfied with the shortcomings of existing models of sociocultural complexity have suggested that *heterarchy* rather than *hierarchy* is a better way to understand complex traditional societies. The term *heterarchy* refers to an organizational pattern in which "each element possesses the potential of being unranked (relative to other elements) or ranked in different ways, depending on systemic requirements." Social systems can be related to each other laterally as well as vertically. In this conceptualization, the activities of Israelite women can be considered subsystems, each with its own rankings and statuses. Especially in professional groups but also in informal networks, women exercised leadership and dominance vis-a-vis other women in the system. Looking at women's systems, along with those of men, as constituents of the heterarchical complexity of Israelite society rescues women from the notion of oppression, as implied by the term patriarchy, and allows a more nuanced reading of their lives.<sup>23</sup>

Individuals could possess different rankings depending on the activity and social situation they were engaging in. They might have functioned in a subordinate role in one set of circumstances yet have enjoyed superior status in another context. It was also likely that the personal characteristics of individuals had consequences for their standing: certain character traits and

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<sup>22</sup>Bird, "Images of Women in the Old Testament," 44; Meyers, *Rediscovering Eve*, 193-202.

<sup>23</sup>Meyers, "Women: Biblical Period," *EJ* (second edition), 161.

actions enabled an individual to gain or lose status. Life was not rigidly structured in fixed hierarchical patterns but shifted in different situations over time.

The nature of status explains the circumstances of the daughter sold into slavery. The daughter's status and that of her children were imperiled because she was sold into slavery. The right of the father to sell his daughter is due of his authority over her as a parent, and both fathers and mothers had the right to sell their sons. (2 Kings 4:1; Neh 5:5) Generational rank meant that parents had authority over children: both fathers and mothers had jurisdiction over sons and daughters.<sup>24</sup> Parents possessed a vertical relationship over children, and the purchaser of a daughter sold into slavery also held a vertical relationship with her. She remained his אָמָה, his slave. But if she were designated for his son, their relationship was horizontal, and she was to be treated as a free-born daughter. In this case, her status as the slave of her intended husband's father was to be nullified. The obligation to marry her cannot be transferred from father to son, and so she must be treated by her former master according to the rules pertaining to daughters-(in-law). Her status was to be transformed.

Even without an abrupt change in fortune, individuals did not necessarily remain in the same rank. Women were able to maneuver for greater power within a household. A paternal house might witness a battle between maternal houses if the household were polygynous.<sup>25</sup> The first sons of each mother were rivals to succeed the father, and if the mothers were of different ranks, the son of a mother of higher rank had a natural advantage. Narrative accounts depict the struggles of the sons of a low-status wife to succeed their fathers and the resistance they

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<sup>24</sup>Tikva Frymer-Kensky, "Virginity in the Bible," in *Gender and Law in the Hebrew Bible and the Ancient Near East* (ed. Matthews, Victor H.; Levinson, Bernard M.; Frymer-Kensky, Tikva; Sheffield: Sheffield Academic Press, 1999), 96.

<sup>25</sup>Cynthia R. Chapman, *The House of the Mother: The Social Roles of Maternal Kin in Biblical Hebrew Narrative and Poetry* (The Anchor Yale Bible Reference Library; New Haven: Yale University Press, 2016), 38-50.

encountered. In dialogue embedded in narratives, emphasizing an individual's status as אַמָּה, "maidservant," or בֶּן־הָאֲמָה, "son of a maidservant," serves to denigrate that person: Sarah stresses Hagar's rank in trying to dispossess Ishmael (Gen 21:10), and Jotham is portrayed as rebuking the citizens of Shechem for killing his father's sons and raising the son of his maidservant (בֶּן־אֲמָתוֹ) to be king.<sup>26</sup>

The daughter sold into slavery could try to enhance her status. A woman could retain ties to the members of her father's household: just as a free woman could use her relationship with them to advance her position, a daughter sold for marriage could depend on them to maintain her status in her husband's house. The relationship to her natal family is the basis on which the statute provided her with protections. She could depend upon her enduring bond with her father's house to affirm her status in her purchaser's household because if mistreated, she could seek the protection of her natal family: she could enjoy be redeemed from slavery, or she could be emancipated with her family's debt remitted, depending on the type of mistreatment.

A daughter sold into slavery found herself vulnerable: she had subordinate status, similar to an enslaved male, but the reason for her enslavement, her family's economic situation, made her situation precarious. The shifting fortunes in rank for men and women in Israelite society meant that her status could fluctuate for the better or the worse. Her vertical relationship vis-a-vis her purchaser could become a horizontal relationship with his son. The nature of marriage according to the Hebrew Bible could further aid or hinder her shifting fortunes.

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<sup>26</sup>Terminology mirrors the low rank of a female slave: in direct address, the phrase עַבְדְּךָ/בֶּן עַבְדְּךָ, "your servant/ the son of your servant," is used to express humility, and the related phrase בֶּן אֲמָתְךָ, "the son of your maidservant," intensifies the sense of humbleness.(Chapman, *The House of the Mother*, 196) The magnitude of the plague of the death of the first-born is expressed as occurring from the first-born of Pharaoh who sits on the throne to the son of the maid-servant (שִׁפְחָה) who is behind the hand-mill.(Exod 11:5)

### *Marriage and Divorce in the Hebrew Bible*

While biblical texts do not manifest a complete set of procedures and laws for marriage and divorce, certain features are clear. Marriage appears to be comprehended in two seemingly contradictory ways in the Hebrew Bible. That the man served as the active party in constituting a marriage is based on a number of pieces of evidence: the verbs, for example, employed in different genres of biblical texts, such as *לקח אשה* or *בשא אשה*, convey the assumption that the man initiated the marriage process and that marriage was the acquisition of the bride by the groom. But the words should not be taken at face value: despite the terminology of acquisition, the husband gained the right to marriage, not ownership of his wife. Furthermore, marriage is termed *ברית*, “a covenant”, a term implying free consent to the agreement and a significant amount of mutuality (although not complete equality) in Mal 2:14; Ezek 16:8; and Prov 2:17.<sup>27</sup>

Similarly, the only biblical legal text on divorce, Deuteronomy 24:1–4, leaves the impression that only men could initiate divorce. If this were the case, a man was restricted in his right to divorce a wife only in unusual circumstances, and the right to a divorce was available to a woman only under unusual circumstances. (Exod 21:10-11; Deut 22:13-29; 24:1-4)<sup>28</sup> But it is possible that this impression, that only men could initiate divorce, is due to the circumstances of the specific situation addressed in this text, the case of a man seeking to remarry a woman to whom he had once been married: since the husband was the active party in this case, in the absence of other biblical texts that might offer other information, the description leaves the

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<sup>27</sup>Paul Kalluveettil, *Declaration and Covenant: A Comprehensive Review of Covenant Formulary from the Old Testament and the Ancient Near East* (Analecta Biblica 88; Rome: Biblical Institute Press, 1982), 79. Dan 11:6, 17 refers to a diplomatic marriage between the Seleucid and Ptolemaic dynasties, and the word *מישרים* or *ישרים* stands as a replacement for the word *ברית*, “covenant”. But how much significance this had for the marriage of common people is hard to extrapolate.

<sup>28</sup>A. Toeg, “Does Deuteronomy XXIV, 1-4 Incorporate a General Law on Divorce?” *Dine-Israel* 2 (1970): v-xxiv.

appearance that in all situations of divorce, the husband was the one to take the initiative.<sup>29</sup> The narrative of a Levite's concubine leaving him (Judg 19:2) offers possible evidence that a woman could take the initiative in a divorce, but there are many interpretive difficulties with this passage.<sup>30</sup> Sources from outside the Bible offer evidence that the woman did have the right to divorce. Mesopotamian texts indicate that women could initiate divorce,<sup>31</sup> and the Elephantine

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<sup>29</sup>Meyers, "Women: Biblical Period," *EJ* (second edition), 158; Yair Zakovitch, "The Woman's Rights in the Biblical Law of Divorce," *Jewish Law Annual* 4 (1981): 28-46.

<sup>30</sup>Among these difficulties is that the woman is termed a פילגש, "a concubine," and it is not clear whether the procedures of divorce would apply the same way to a wife and to a concubine. The text employs the term נָהַג to refer to her return to her father's house, and while it does not seem likely that this means that she engaged in sexual intimacy as a prostitute but more likely that her act was to reject the Levite, whether her return constituted divorce is debatable. See Phyllis A. Bird, "'To Play the Harlot': An Inquiry into an Old Testament Metaphor," in *Missing Persons and Mistaken Identities*, 219-236.

<sup>31</sup>In the Old Babylonian period, Mesopotamian marriage contracts assume that the wife could initiate divorce and put limits on her right to do so. A number of them restrict her right to do so in the same way that the husband's right was restricted: if either initiated divorce, they were subject to the same fine. However, the majority of extant marriage contracts from the same time period and same geographic territory restrict her right so much that her right to do so was voided: the husband was subject to a financial penalty, but she was subject to a severe penalty, such as being tied up and thrown in the river or sold into slavery. It may be speculated that women and their families of origin who agree to the severe restriction may have been in an inferior financial position vis-a-vis the husband. See Samuel Greengus, "The Old Babylonian Marriage Contract," *JAOS* 89 (1969): 505-532; Raymond Westbrook, *Old Babylonian Marriage Law* (Archiv für Orientforschung; Horn, Austria: Berger & Söhne), 112-138. Mesopotamian material chronologically overlapping the biblical period shows a general decrease in a woman's right to initiate a divorce. Yet the wife's right to divorce reappeared from time to time. An unusual contract from Neo-Assyria allows the woman to divorce without penalty, but the man would have to pay twice the amount of the dowry: this was the marriage of the daughter of a high-ranking woman of the royal court to the chief court tailor. See Nicholas Postgate, *Fifty Neo-Assyrian Legal Documents* (Warminster, England: Aris & Phillips, 1976), number 14; K. Radner, *Die neuassyrischen Privaturkunden* (Helsinki; University of Helsinki, 1997), 159, 164-166; Martin Stol, *Women in the Ancient Near East* (n.p.: De Gruyter, 2016), 202-203. Extant Neo-Babylonian contracts do not exhibit parity of any kind, and only the husbands enjoyed the right to divorce. (Stol, *Women in the Ancient Near East*, 209-233; M. T. Roth, *Babylonian Marriage Agreements: 7th-3rd centuries B.C.* [Alter Orient und Altes Testament 222; Kevelaer: Butzon & Bercker; Neukirchen-Vluyn: Neukirchener Verlag, 1989, 14, 108-113, numbers 34-35; Cornelia Wunsch, *Urkunden zum Ehe-, Vermögens- und Erbrecht aus verschiedenen neubabylonischen Archiven* [Babylonische Archive 2; Dresden: ISLET, 2003], 36 n.3).

papyri, from an Israelite mercenary colony in Egypt in the 5th century BCE, attest to a woman's right to do so as well.<sup>32</sup>

The contradictory nature of marriage is manifested in other aspects of the marriage. The husband did have the right of an exclusive relationship with his wife in a way that a married woman did not have vis-a-vis her husband. The husband was also able to marry multiple wives. However, the assumption of a number of non-legal biblical texts, such as Gen 2:24 and the Song of Songs, is of a monogamous relationship.

In the same vein, the husband could annul a wife's vow but did not have absolute power over his wife in biblical law.<sup>33</sup> Women had rights in a marriage, and it is striking that a wife was at least partly enfranchised. A husband could not sell his wife into debt-slavery. In contrast, the Laws of Hammurabi 117 allows a debtor to sell his wife, son, or daughter into bondage to pay off

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<sup>32</sup>See texts B28, B36, and B41 in Bezael Porten, *The Elephantine Papyri in English: Three Millennia of Cross-Cultural Continuity and Change* (second revised edition; Atlanta: Society of Biblical Literature, 2011), and the discussion in Mordechai Akiva Freedman, *Jewish Marriage in Palestine: A Cairo Geniza Study*, 312-319. In regard to Babatha's ketubbah (Papyrus Yadin 10), a celebrated text from a later period (the Bar-Kochba revolt of 132-135 C.E.), it may be somewhat far-fetched to claim that the phrase in means that the wife could implement a divorce at will: [אחלה] ל[ך] שטרא דנה כדי חזא "And whenever you tell me, I will exchange for you this document, as it fitting." It most likely means that she is entitled to a replacement document. See Yigael Yadin, Jonas C. Greenfield, Ada Yardeni, and Baruch A. Levine, *The Documents from the Bar Kokhba Period in the Cave of Letters: Hebrew, Aramaic and Nabatean Papyri* (Jerusalem: Israel Exploration Society, 2002), 118-141, especially 139-140; Yadin, Greenfield, and Yardeni, "Babatha's Ketubba," *IEJ* 44 (1994): 75-99. See also Philip F. Esler, *Babatha's Orchard: The Yadin Papyri and an Ancient Jewish Family Tale Retold* (Oxford: Oxford University Press, 2017).

<sup>33</sup>The limits of a husband's authority is manifested in the description of Eve as עזר כנגדו in Gen 2:23; while it has been a crux interpretum for ages, the sense of the phrase is that even if the woman possesses a lesser status, as an עזר to the man, she is the man's counterpart, as implied from כנגדו. He is first among equals, and she was not in complete subordination to him. The following verse, Gen 2:24, describes male and female pairing as a man leaving his mother and father and bonding with his wife. The man is active, and the woman is ostensibly less so. It is an image of near, but not quite, equals. At the same time, Gen 3:16 presents an image of greater male dominance, especially in the realm of sexuality and procreation. Meyers offers an extensive analysis of the phrase in *Rediscovering Eve*, 70-76.

a debt with a limit of three years of servitude.<sup>34</sup> The Laws of Eshnunna 24 allows a creditor to distraint a debtor or a debtor's wife, children, or slaves to force payment of the debt.

Marriage was bilateral, and Millar Burrows locates the roots of marriage in barter, in an exchange between families.<sup>35</sup> What is helpful in his conceptualization is the focus on the reciprocity inherent in the interchange. Where marriage transcended barter was the formation of a permanent relationship, perhaps adumbrated by the expectation that a successful barter would likely lead to further exchanges between the parties. It was not about an exchange of equal value, a "bride-price" for a bride, but about the establishment of mutual ties. The objects of value that were presented to the other side expressed and confirmed the social bond. It strengthened the alliance between families. The process of marriage created a network of relationships, of rights and duties between the parties and their natal families, and what the bride's and groom's families received from one another, the *mohar* and the dowry, was presumably used by the families to set up the couple's household<sup>36</sup> and perhaps also utilized to find a spouse for the bride's and groom's siblings and other relatives, creating further ties to other kinship groups.

The process of establishing a marital relationship was a way of creating of bond between two בתי אב, lineages. It established a new household with ties to both the husband's and wife's natal households. The wife retained the relationship she had with her natal family after she married, and she continued to have a relationship with her husband's family after he died. Two

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<sup>34</sup>See Pamela Barmash, *The Laws of Hammurabi*, forthcoming, on whether this paragraph of the Laws of Hammurabi was law actually practiced.

<sup>35</sup>Burrows, *The Basis of Israelite Marriage* [AOS 15; New Haven: American Oriental Society, 1940], 9-15. Paul Koschaker argued that marriage in Mesopotamia was effected through purchase, a viewpoint much debated by scholars. See Paul Koschaker, *Rechtsvergleichende Studien zur gesetzgebung Hammurapis: Königs von Babylon* (Leipzig: Veit, 1917), 137.

<sup>36</sup>See the complaint by Rachel and Leah that their father had used their money for himself.(Gen 31:15)

parties came to a mutual agreement and concurred on an exchange that creates a new household that retained ties to the two prior households.

In the process of creating a marital bond, the groom took the lead because men were privileged in the legal sphere and, therefore, he was the one to initiate the formal process with the *mohar*, the betrothal gift,<sup>37</sup> the formal emblem of his commitment to the marriage.<sup>38</sup> He offered the *mohar* to the bride's father rather than to the bride for two reasons: 1) the higher status of males meant that her father served as head of the family; and 2) the bride was generally younger, and social rank depended not just on gender but on age as well. Only in unusual circumstances did woman act for herself.<sup>39</sup>

The *mohar* was an emblem more than a payment: it signalled the creation of social, legal, and emotional bonds between the parties to the marriage. It was not temporary but effected a permanent relationship. And the groom was not the only one to provide a prestation. The bride's family gave her a dowry. The offering of a *mohar* for a woman started the process, and the interchange of offerings between parties that finalized the marital bond.

But the case of the daughter sold into slavery did not fit the regular pattern of establishing a marital relationship: the sale of a person to another was distant and distinct from an interchange creating a permanent relationship. It was uneven and unequal. Reciprocity was compromised. It is a fair assumption that no one, male or female, would enter or place someone into servitude

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<sup>37</sup>Often translated as "bride price". Millar Burrows suggested "compensation-gift", reflecting its origins as barter and its use in establishing a bond between families. (*The Basis of Israelite Marriage*, 10-15)

<sup>38</sup>The extent to which the initiative was the groom's can be seen in the book of Ruth, where Naomi and Ruth are depicted as expending great effort to prompt Boaz to undertake legal action. His declaration in Ruth 4:10 that he has acquired a wife is deeply ironic in light of the machinations that Naomi and Ruth are portrayed as undertaking in order to prompt him to act.

<sup>39</sup>The narratives on Samson display ironic humor in that the hero's parents need to make the marriage arrangements since Samson apparently had only seen the Philistine woman and had not spoken to her. (Judg 14:1-5)

without dire need, and without the exchange of *mohar* and dowry, the daughter has entered into a different form of marital relationship, one that had unresolved and unsettled aspects in comparison to the typical form of marriage. The daughter became the object of value. She remained an אמה to her purchaser if she were designated for him, but she secured the status of daughter if she were designated for his son. Even in the case in which she remained an אמה, her owner's right to sell her was restricted. At the same time her ability to rely on her natal family was greatly limited compared to a primary wife.

The ambivalent, even somewhat amorphous, nature of the daughter's marital relationship may reflect that marriage was not yet an institution all that well defined beyond (primary) wifehood: the relationships between a man and other women with whom he had a legitimate bond had a range of characteristics, both formal and informal. This amplifies the fluidity in the vertical and horizontal relationships that determine status. Bernard S. Jackson is correct in noting that there may not have been a single conception of marriage that clearly distinguished its options from all other relationships.<sup>40</sup> Unlike contemporary marriage, which is under the administrative rule of a state with legislated formal procedures, a fully worked-out concept of marriage was still in formation.<sup>41</sup>

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<sup>40</sup>Jackson, "The 'Institutions' of Marriage and Divorce in the Hebrew Bible," 230-232.

<sup>41</sup>As a consequence of this ambiguity, it may be marriage contracts delineating detailed financial terms and property rights were negotiated only between families that possessed sufficient resources. But whether those contracts were normally in written form is not clear, and perhaps they were recorded textually only under a limited range of circumstances. This was the case as well elsewhere in the ancient Near East. How much this applies as well to divorce is unknown: a bill of divorce seems to be part of the process of divorce.(Deut 24:1-4; Isa 50:1)

Furthermore, although marriage in the Bible was an established practice that had social and legal aspects, it did not have religious aspects. Celebrations were held to mark the social change, and it is not clear that the procedure of joining a couple in matrimony in Ancient Israel had any religious aspects: it may be that prayers were invoked on behalf of the couple to have children, but more than that is unknown.(Meyers, *Rediscovering Eve*, 159)

*Narratives on the Maidservant's Quasi-Marital Relationships*

The ill-defined nature of marital relationship of the daughter sold into slavery is illustrated vividly in narratives depicting the fluctuating fortunes of an אַמָּה, a maidservant and her children in what appear to be quasi-marital relationships, and situating the case of the daughter sold into slavery amidst those narratives sheds light on the nuances of her marital situation.

In shifting from legal texts to narratives, it must be noted that the genre in which law is depicted has an effect on its presentation.<sup>42</sup> A narrative is not a transcript of legal procedure: it may distort law for the sake of plot or character development. It can show how a legal system was perceived to operate and whether an action in the legal realm was deemed to be just or unjust. A narrative may convey what justice ought to be in the opinion of the author: it may aspire to moral justice, a model of justice in which victims are vindicated, hurts are acknowledged, and relationships are restored. In so doing, legal procedures and institutions may be reshaped (or perhaps distorted) in order to reach a more just conclusion.

The narratives illustrate negotiations over financial arrangements, the establishment of the household, and the celebratory feast. The laws treat financial arrangements as the *mohar* explicitly and the dowry implicitly: the case of the daughter sold into slavery for marriage presumes that the father cannot provide a dowry and is forced to sell her rather than make the arrangements usual for a marriage. The narratives depict the *mohar* being paid in unusual ways, in labor, either prior to the marriage or as a promise after the marriage (Gen 29:19-20), or, in the case of a warrior son-in-law of a king, in enemy foreskins.(1 Sam 18:25) The narratives also show the bride's family providing her with a dowry.(Gen 2:24 and 29; Josh 15:18-19; Judg 1:14-15; 1 Kings 9:16)

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<sup>42</sup>In contrast, law organizes human actions into a fixed set of patterns. Law aims for the predictable, and it has to curtail the complexity of a given case in order to fit categories and remedies. For more on narrative in comparison to law in Pamela Barmash, "The Narrative Quandary: Cases of Law in Literature," *VT* 54 (2004): 1-16; "Law and Narrative in Genesis," *ZAR* 16 (2010): 211-223; "Achieving Justice Through Narrative in the Hebrew Bible: The Limitations of Law and the Legal Potential of Literature," *ZAR* 20 (2014): 181-199.

In so doing, a narrative shapes marital law for the sake of the storyline. Jacob's deception of his brother is recompensed by Laban's deception of him when Jacob is tricked into marriage with Leah. Jacob's own mother instructed him to deceive his father, and it is her own brother who deceives Jacob.<sup>43</sup> The parallel double-dealing enriches the narrative. The bride's family appears to have taken advantage of the groom in the cases of Jacob and David: the standing of the bride's family is so superior to the groom's situation that the groom has no choice but to agree to the unfavorable request. The maidservants of Rachel and Leah provide for more children in a contest between sisters about who can bear (the most) children, and the unusual dowry of towns from a magnate to a daughter prompts its being mentioned.

Including female slaves in the rivalry of bearing children prompts the portrayal in Genesis of women of different marital status as providing legitimate offspring, offspring who are entitled to an inheritance.<sup>44</sup> Sarah, Rebecca, Rachel, and Leah give birth to heirs, and their status as wife is not contested. However, the status of other women is more ambiguous and less well-defined. Hagar, a שפחה, is given to Abraham as a surrogate by Sarah (Gen 16:1-3), and she is termed an אמה to Abraham in Gen 21:12.<sup>45</sup> Abraham considers Ishmael as his heir and the fulfillment of the divine promise.(Gen 17:18) Zilpah is a שפחה given by Laban to Leah on her marriage, and Bilhah is a שפחה given by Laban to Rachel on her marriage.(Gen 29:24) After Leah can no longer bear

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<sup>43</sup>The narrative portrays how Laban manipulates the legal system to his advantage because of his greater power in his relationship with Jacob and how he can distort the terms of a contract. Laban and Jacob have made a contract to work seven years for Laban's daughter Rachel, but on the marriage night, Jacob discovers that Laban has brought his other daughter. If Jacob walked away from further dealings with Laban, he would lose what he has already invested. He wants to wed Rachel too much (even if it appears that he has not looked upon her since falling in love with her and does not realize that he is in bed with Leah).

<sup>44</sup>It cannot be assumed that the stories in Genesis accurately preserve archaic law of the epoch in which they are set. See my essay, "Law and Narrative in Genesis," 212-213.

<sup>45</sup>An added complication may be whether the hypothesized Pentateuchal documents use different terms for female slave. See S.R. Driver, *The Book of Genesis* (London: Methuen, 1904), xiii.

children, she gives Zilpah, again termed a שפחה, with the proviso that she is לאשה to Jacob.(Gen 30:9) Clearly, אשה does not necessarily mean a primary wife or perhaps any marital status. Rachel give Bilhah, termed an אמה, as a surrogate to Jacob.(Gen 30:3) Zilpah's children seem to be considered Leah's children, and while the tribes whose eponym are children of Bilhah and Zilpah possess a lower status than the children of Leah and Rachel, they are still included among the tribes.

Narrative texts depict different family members engaged in negotiations over marriage, mirroring the shifting rankings. Brothers are involved, even when the father is alive. In the betrothal of Rebecca, it is her brother Laban who takes the lead.(Gen 24:53-60) In the marriage negotiations between Dinah and Shechem, Hamor first approaches Jacob but then it is Jacob's sons with whom he must deal.(Gen 34:14) The Song of Songs views marriage from the vantage point of marriage-age daughter, and her brothers by her mother are the ones who are concerned with protecting her chastity.(Song 1:6; 8:8-9)

Other narratives depict the father as the only one negotiating his daughter's marriage. Laban takes the lead in marrying his daughters Leah and Rachel off to Jacob.(Gen 29) Jethro/Reuel negotiates the marriage of his daughter Zipporah to Moses.(Exod 2:15-22) Saul dictates the terms of David's marriage to his daughters Merab and Michal.(1 Sam 18:17-30) In all of these narratives, the fathers have multiple daughters, and either no male heir is mentioned or there is no dispute as to who the male heir is. The groom is a fugitive in two of the cases, and in the third, the status of the father (King Saul) is much higher than that of the groom (David). The status of the groom is the younger son of his father may factor in the nature of the negotiations (although Moses' status is less clear).<sup>46</sup>

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<sup>46</sup>Chapman, *The House of the Mother*, 70. The father becomes involved when the household would be absorbing the groom for a period of time.

In contrast to the narratives, the statute about the daughter sold into slavery depicts the father is taking the lead because he is the only male who can sell her into slavery. Her brothers cannot sell their sister, even though she may have to be redeemed by the *בית אב*, patrilineal family, to whose leadership a brother would succeed.

The status of the children of the daughter sold into slavery is left unmentioned in Exod 21:2-11. The narrative texts of Genesis indicate that the slave-woman's children are free,<sup>47</sup> and at least in the case of Leah, she names her maidservant's children, perhaps indicating that they are considered her children.<sup>48</sup> Although the children are free, they do have secondary status.<sup>49</sup> The slave-women Hagar, Bilhah, and Zilpah remain the slaves of Sarah, Rachel, and Leah respectively, and while they appear to have a marital bond with their husbands, it is not equal to that which Sarah, Rachel, and Leah enjoy; the slaves are still denoted as the *אמה* or *שפחה* of the husbands (Gen 21:12; 32:23) despite the fact that the term *לאשה*, usually understood "as a wife" is used to describe how the patriarchs relate to them (Gen 16:3; 30:4. 9).<sup>50</sup> Their sons inherit their share of

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<sup>47</sup>Although according to the Laws of Hammurabi 170-171, a man's children by a slave woman are not able to inherit unless he formally adopts them, they appear to be deemed free at least in the narratives of Genesis.

<sup>48</sup>For more on the maternal prerogative of naming, see Ilana Pardes, *Countertraditions in the Bible: A Feminist Approach* (Cambridge: Harvard University Press, 1992), 40-43.

<sup>49</sup>The Royal Steward inscription records the burial of a man with his *אמה*, signalling her great significance to him, despite her status as a slave. See N. Avigad, "The Epitaph of a Royal Steward from Siloam Village," *IEJ* 3 (1953): 137-152.

<sup>50</sup>Abraham is described as taking Keturah *לאשה* "as a wife" in Gen 25:1, and yet she is called a *פילגש* in Gen 25:6. Further, while Westbrook ("The Female Slave," *Gender and Law in the Hebrew Bible and the Ancient Near East* [ed. V. H. Matthews, B. M. Levinson, and T. Frymer-Kensky; JSOTSup 262; Sheffield: Sheffield Academic Press, 1998], 229-230) argues that a woman could not be both a wife (even a secondary one) and a slave. He notes that this was legally peculiar and observed that it would be bizarre that children would inherit their own mother as a slave. Westbrook's argument is based on a logical line of demarcation between law of personal status and law of property than actually was the case. A man inheriting his mother as a slave could be a possible consequence of legal slavery. Old Babylonian marriage contracts stipulate that the woman slave becomes the second wife of the man and the slave of the primary wife, and the Laws of Lipit-Ishtar 25 and the Laws of Hammurabi 170-171 distinguish between children of the

their father's property, and even Ishmael must be intentionally disinherited.(Gen 21:10-13)

Whether the bond between concubine (פילגש) or slave woman (אמה or שפחה) and the man should be termed a secondary marriage or not a marriage at all is more of a red herring: the son of a mother of that status does have a right to inherit, but the narratives about Abraham show that their sons can be maneuvered out of a inheritance by being given a gift and sent away from the son deemed as the major heir.(Gen 25:5-6)

The daughter sold into slavery had a double liability against her. As a woman, her general status was lower than a man, and her sale into slavery put her at further disadvantage. The social system made her dependent. But the nature of status and the inchoate nature of marriage for those who were not primary wives made leeway for factors that could both alleviate and exacerbate her situation. Her fortunes and the fortunes of her children could fluctuate. Her children might be free, and her sons might have the right to inherit from their father. But they could be finagled out of their inheritance. The pliable nature of status according to gender and the amorphous nature of marriage could protect a daughter sold into slavery. Nonetheless, her vulnerable lingered.

### *The Reshaping of the Slave Laws of the Book of the Covenant in Deuteronomy*

The Deuteronomic counterpart to the Book of the Covenant (Deut 15:12-18) reshapes the Exodus passage to deliberately propose a different set of protections for slaves, an outcome of Deuteronomic program of social reform.<sup>51</sup> It incorporates the אמה in a direct and unambiguous

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primary and secondary wives. The slave Tamet is freed by her master her twenty-two years after another (free) man has married her. She is the sole wife to her husband. See R. Kessler, "Die Sklavin as Ehefrau: Zur Stellen der 'ĀMĀH," *VT* 52 (2002), 501-512; Stol, *Women in the Ancient Near East*, 205; Jan A. Wagenaar, "The Annulment of a Purchase Marriage in Exod 21, 7-11," 221-223.

<sup>51</sup>The reshaping is evidence for relative dating: the Deuteronomic passage is later than the Exodus passage. But this is not proof that all of Deuteronomy is later than the Book of the Covenant. The laws on slavery are placed at the beginning of the Book of the Covenant, and the second person form used in Exod 21:2 is in stark contrast to Exod 21:12-22:16. This prompts the question of

way, appearing to indicate criticism of the Exodus passage.<sup>52</sup>

Deut 15:12-18 appears to be based on Exod 21:2-11 because of the large number of parallel elements: the usage of words such as *הפשי*,<sup>53</sup> *עברי*,<sup>54</sup> *רצע*;<sup>55</sup> the six-year term of service; manumission in the seventh year; the attention paid to the financial component of manumission; the option for the slave to decide whether to remain in bondage forever; and the ritual of assuming lifetime bondage.<sup>56</sup> The clustering of these parallel elements demonstrates that Deut

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whether this passage was originally part of the collection of statutes that make up the Book of the Covenant and whether its date of composition was at a different time as the other statutes (or at the same time as Exod 22:17-23:19, which employs the second person). A number of methods have been employed to determine the date of biblical texts besides the dependence of one text on another. Using the level of social complexity as chronological evidence has failed to produce a fixed time period because an institution like debt-slavery could occur in a wide range of social conditions. Linguistic evidence seems the most secure, but even then determining that the Book of the Covenant manifests Early (or Classical) Biblical Hebrew (or any other stratum of Biblical Hebrew) yields a wide time period. In the case of Early (or Classical) Biblical Hebrew, its time range is from sometime in the First Temple period to the Exilic period. Another means of dating, the relationship of D to Josiah's reform narrated in 2 Kings 22-23, has complications. See Pamela Barmash, "Determining the Date of Biblical Legal Texts," in *Oxford Handbook of Biblical Law* (ed. Pamela Barmash; Oxford: Oxford University Press, forthcoming).

<sup>52</sup>Whether the laws on the release of slaves, either as evidenced in Exod 21:2-11 or Deut 15:12-18, were ever put into practice is debatable. Jer 34:14 demonstrates that it was put into practice at best not consistently or at worst not at all.

<sup>53</sup>Other than these two passages, the word *הפשי* is not found elsewhere in the Pentateuch. It is employed a number of times in Jer 34: 9, 10, 11, 14, and 16, which addresses the manumission of slaves (most likely alluding to Deut 15:1, 12-18).

<sup>54</sup>These are the only statutes in which the word *עברי* appears. Elsewhere, the word is found in which Israelites found themselves in a foreign context (e.g. narratives about Joseph, Gen 39:17 and 41:12, about Egyptian bondage, Exod 2:11 and 13; about Jonah, Jonah 1:9).

<sup>55</sup>This root is found only in these statutes.

<sup>56</sup>The extent to which the Deuteronomistic law is dependent on Exodus can be seen most clearly in comparing both sets of law to Lev 25:25-28, a formulation of laws on slavery that does not have a single echo of Exodus passage. Lev 25:25-28 is a set of statutes that is independent of Exodus and Deuteronomy. For more on this issue, see Sarah Japhet, "The Relationship Between the Legal Corpora in the Pentateuch in Light of the Manumission Laws," in *Studies in Bible 1986* (ScrHier 31; Jerusalem: Magnes Press, 1986), 63-89; Bernard M. Levinson, "The Manumission of Hermeneutics: The Slave Laws of the Pentateuch as a Challenge to Contemporary Pentateuchal

15:12-18 has reshaped Exod 21:2-11.

The Deuteronomy passages reshapes the Exodus passage both in content and literary form. While the Exodus statute begins by addressing the master, “When you purchase a Hebrew slave....” and then assumes the usual third person form of cuneiform casuistic legal formulation, the Deuteronomic law is entirely in the second person addressed to the master in order to motivate him to release his slave.<sup>57</sup> Even more strikingly, the Deuteronomic passage transforms the legal rulings of the Exodus statute. The requirement to manumit a slave is applied to both male and female slaves.<sup>58</sup> Exod 21:2-7 provides for a male slave to go free in the seventh year without his paying the master for his release. Deut 15:12-14 goes beyond the payment-free release and prescribes that the master provide compensation to the manumitted slave in the form of sheep and/or goats, grain, and oil.<sup>59</sup> When a slave refuses manumission and asks to remain in the master’s house, no mention is made in the Deuteronomic passage that his wife and children are the reason he wishes to remain because manumission would apply to them as well. The slave wishes to remain because he enjoys the positive situation he has with his master. Deuteronomy clarifies the Exodus process for the slave who refuses manumission: in Exodus, the procedure

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Theory,” in *Congress Volume Leiden 2004* (ed. André Lemaire; Leiden: Brill, 2006), 281-324; John Van Seters, *A Law Book for the Diaspora: Revision in the Study of the Covenant Code* (New York: Oxford University Press, 2003), 82-95.

<sup>57</sup>The statutes in Deuteronomy are replete with motive clauses in order to inspire the master to release his slave.

<sup>58</sup>The awkward formulation אהיך העברי או העבריה, “your brother, the male or female Hebrew,” is due to the splicing of the reference to both male and female in a passage dependent on earlier wording that did not include women. Even in contemporary English, the use of a pronoun to refer to both men and women is awkward and gives rise to infelicitous expressions as “he/she” or “s/he” or worse. Moreover, the statute in Deuteronomy is formulated so generally that it appears to encompass all women without exception. Lastly, Deut 15:7 reads וּאִם לֹא־מָתַךְ תַּעֲשֶׂה כֵן, a redundancy with an emphatic particle that emphasizes the modification of an earlier law that did not decree emancipation for female slaves.

<sup>59</sup>It is clarified that a slave does not have to pay for manumission. In this way, going free הָנַם is quite the opposite of the way the master experiences the manumission of his slave in Exod 21:2.

mandates that the master take the awl and pierce the slave's ear, but it is not so clear how the door or doorpost figures in this procedure. Presumably it is to serve as a rigid backdrop against which to pierce the slave's ear. The statute in Deuteronomy makes it clear: וּלְקַחְתָּ אֶת הַמְרִצֵּעַ וְנָתַתָּה בְּאָזְנוֹ וּבַדְלָת׃, “You shall take the awl and put it through his ear into the door”. There is no mention of וְהָגִישׁוּ אֶל־הָאֱלֹהִים, “he shall bring him to God,” because local shrines are not legitimate after cult centralization.

The program of secularization and humanitarianism in Deuteronomy accounts for the transformation.<sup>60</sup> The provision of the newly freed slave with gifts is apparently to facilitate his/her ability to survive on his/her own. The extension of the manumission to female slaves reflects the legislator's humanistic concern,<sup>61</sup> as is the omission of any reference to the master giving a wife to the slave or the slave wishing to remain in his master's service in order to be with his wife. The master does not control the private life of his slave, or as Deuteronomy puts it, אֶחָיִךְ, “your fellow Israelite citizen”. The master buys the slave's service, not his person. The slave's family life is independent of his master. The master is never referred to as אֲדוֹן, “master,” just the slave is referred to as “your fellow citizen.” The master is commanded to set the slave free, whereas the rule in Exodus states impersonally that the slave will go free. The

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<sup>60</sup>Moshe Weinfeld, *Deuteronomy and the Deuteronomistic School* (Winona Lake, Ind.: Eisenbrauns, 1992 <1972>), 232, 272, 282-283. This also accounts for the rule against returning fugitive slaves to their master in Deut 23:16. One wonders if 1 Sam 22:2 could serve as evidence that debtors were not returned to be sold by their creditors. However, according to 1 Kings 2:39-40, an Israelite master is depicted as going out to reclaim his slaves. Does this prove that Deuteronomy is legislating against the norm in ancient Israel or that fugitive slaves were returned to their masters in areas under non-Israelite control?

<sup>61</sup>Deuteronomistic laws mandate that men and women participate in ceremonies, 29:10, 17; 31:12. The festival celebrations refer to sons as well as daughters, male servants as well as female servants (12:12, 18; 16:11, 14). Weinfeld argues that the reason why the wife is not mentioned is not that she is to sit alone at home while all the other members of the household make the pilgrimage but rather that she, too, is addressed in the word “you”, the recipient of the command, which applies equally to the husband and the wife (*Deuteronomy and the Deuteronomistic School*, 291).

Deuteronomy law is formulated in the second person and addressed to the master in order to motivate him to release what he might think is a piece of property too valuable to manumit. Three reasons are offered to motivate the master to release his slaves: 1) the Israelites were slaves in Egypt, God freed them, and therefore they are commanded presumably to free their slaves (or obey God's command); 2) the slave has worked twice as hard as a hired worker; and 3) God will bless the Israelites who free their slaves.

The passage on the daughter sold into slavery in the Book of the Covenant and its Deuteronomic reshaping aim at ameliorating the circumstances of slavery. The Exodus passage protects the daughter by restricting her emancipation, keeping her in slavery but preventing her from being sold abroad in the sex trade and allowing her to be redeemed if the purchaser sours on her. It protects her by ordaining that she be provided with maintenance if he takes on another woman and emancipating her only if he withholds her maintenance. The Deuteronomic revamping of the Exodus passage provides for her emancipation, just as for a male slave, and furnishes her with the wherewithal in animals, grain, and oil to resume life as a free person.

### *Conclusion*

The case of the daughter sold into slavery is an unexceptional tragedy befalling an average Israelite family that has fallen into financial straits. Her family's economic vulnerability prevents her from entering into marriage in the usual manner, and the statute in the Book of the Covenant aims at safeguarding her. She is not released after six years during which she could be used sexually by her purchaser because that would leave her vulnerable. If he grows to dislike her, the statute denies him the ability to sell her abroad and provides for her to be redeemed, leaving her in the position she had before the sale. If he takes on another woman, she is to be provided with maintenance; otherwise, if she is denied maintenance, she is freed without payment, a disincentive to her master. This proviso could be manipulated by a malicious master who, willing to let her go

for free, intentionally withholds her maintenance, and it may be surmised that the intention of this proviso is that having to emancipate her for free might prompt her master to continue her maintenance.

The somewhat mutable nature of status in Israelite society has a curious effect on the status of the daughter sold into slavery. An individual might possess a subordinate role in one circumstance but enjoy an enhanced status into another. The daughter sold into slavery remains an אמה, maidservant, to her purchaser. But if his son is to be her sexual partner, the relationship is no longer vertical -- slave to master -- but horizontal, and she is to be treated like a daughter-(in-law).

This fluidity is enabled by an ambivalent conception of marriage as both privileged for the male in certain aspects yet mutual in other aspects. Further enhancing the fluidity was that the parameters for marital relationships between the status of primary wife and concubine (פילגש) were not fully defined. These factors allowed the daughter sold into slavery to regain her free status when the purchaser's son became her intended sexual partner.

The statute in the Book of the Covenant aims at protecting the daughter with a number of provisos, but the Deuteronomic revamping of the slave laws pursues another path in the amelioration of slavery. All slaves are to be freed after six years of servitude, and they are to be provided with the financial means to reassume free living.

*Bibliography*

- Ahituv, Shmuel. *Echoes from the Past: Hebrew and Cognate Inscriptions from the Biblical Period*. Jerusalem: Carta, 2008.
- Avigad, N. "The Epitaph of a Royal Steward from Siloam Village," *IEJ* 3 (1953): 137-152.
- Barmash, Pamela. "Determining the Date of Biblical Legal Texts," in *Oxford Handbook of Biblical Law*, ed. Pamela Barmash. Oxford: Oxford University Press, forthcoming.
- , "The Narrative Quandary: Cases of Law in Literature," *VT* 54 (2004): 1-16.
- , "Law and Narrative in Genesis," *ZAR* 16 (2010): 211-223;
- , "Achieving Justice Through Narrative in the Hebrew Bible: The Limitations of Law and the Legal Potential of Literature," *ZAR* 20 (2014): 181-199.
- , *The Laws of Hammurabi*, forthcoming
- Becking, Bob, and Paul Sanders. "Plead for the Poor and the Widow: The Ostrakon from Khirbet Qeiyafa as an Expression of Social Consciousness," *ZAR* 17 (2011), 133-148.
- Bird, Phyllis A. "Images of Women in the Old Testament," in *Missing Persons and Mistaken Identities: Women and Gender in Ancient Israel* (Overtures to Biblical Theology; Minneapolis: Fortress Press, 1997), 13-51. Originally published in 1974.
- , "Poor Man or Poor Woman? Gendering the Poor in Prophetic Texts," in *Missing Persons and Mistaken Identities*, 67-78. Originally published in 1996.
- , "'To Play the Harlot': An Inquiry into an Old Testament Metaphor," in *Missing Persons and Mistaken Identities*, 219-236. Originally published in 1989.
- Boer, Roland. *The Sacred Economy of Ancient Israel*. Library of Ancient Israel; Louisville: Westminster John Knox, 2015.
- Burrows, Millar. *The Basis of Israelite Marriage*. AOS 15. New Haven: American Oriental Society, 1940.

Chapman, Cynthia R. *The House of the Mother: The Social Roles of Maternal Kin in Biblical Hebrew Narrative and Poetry*. The Anchor Yale Bible Reference Library. New Haven: Yale University Press, 2016.

Chirichigno, Gregory C. *Debt Slavery in Israel and the Ancient Near East*. JSOT Supplement Series 141. Sheffield: JSOT Press, 1993.

Driver, S.R. *The Book of Genesis*. London: Methuen, 1904.

Edenburg, Cynthia. "Ideology and Social Context of the Deuteronomic Women's Sex Laws," *JBL* 128 (2009), 43-60.

Greengus, Samuel. "The Old Babylonian Marriage Contract," *JAOS* 89 (1969): 505-532;

Jackson, Bernard M. "The 'Institutions' of Marriage and Divorce in the Hebrew Bible," *JSS* 56 (2011): 221-251.

-----, *Wisdom-Laws: A Study of the Mishpatim of Exodus 21:1-22:16*. Oxford: Oxford University Press, 2006.

Frymer-Kensky, Tikva. "Virginity in the Bible," in *Gender and Law in the Hebrew Bible and the Ancient Near East*, ed. Victor H. Matthews; Bernard M. Levinson; Tikva Frymer-Kensky, 79-96. Sheffield: Sheffield Academic Press, 1999.

Japhet, Sarah. "The Relationship Between the Legal Corpora in the Pentateuch in Light of the Manumission Laws," in *Studies in Bible 1986*, 63-89. *ScrHier* 31. Jerusalem: Magnes Press, 1986, 63-89.

Levine, Etan. "On Exodus 21,10 'Onah and Biblical Marriage,'" *ZAR* 5 (1999): 133-164.

Levinson, Bernard M. "The Manumission of Hermeneutics: The Slave Laws of the Pentateuch as a Challenge to Contemporary Pentateuchal Theory," in *Congress Volume Leiden 2004*, ed. André Lemaire, 281-324. Leiden: Brill, 2006.

Mendelsohn, I. "The Conditional Sale into Slavery of Free-Born Daughters in Nuzi and the Law of Ex. 21: 7-11," *JAOS* 55 (1935): 190-195

- Meyers, Carol. *Rediscovering Eve: Ancient Israelite Women in Context*. Oxford University Press: Oxford, 2012.
- Meyers, Carol. "Women: Biblical Period," *EJ* (second edition): 156-161.
- Pardes, Ilana. *Countertraditions in the Bible: A Feminist Approach*. Cambridge: Harvard University Press, 1992.
- Paul, Shalom M. *Studies in the Book of the Covenant in Light of Cuneiform and Biblical Law*. SVT 18. Leiden: Brill, 1970.
- , "Exod. 21:10: A Threefold Maintenance Clause," *JNES* 28 (1969): 48-51.
- Phillips, Anthony. "The Laws of Slavery: Exodus 21.2-11," *JSOT* 30 (1984): 51-66.
- Pressler, Carol M. "Wives and Daughters, Bond and Free: Views of Women in the Slave Laws of Exodus 21, 2-11," in *Gender and Law in the Hebrew Bible and the Ancient Near East*, ed. Victor H. Matthews; Bernard M. Levinson; Tikva Frymer-Kensky, 147-172. Sheffield: Sheffield Academic Press, 1999.
- Rad, Gerhard von. *Deuteronomy*. OTL. Philadelphia: Westminster, 1966.
- Toeg, A. "Does Deuteronomy XXIV, 1-4 Incorporate a General Law on Divorce?" *Dine-Israel* 2 (1970): v-xxiv.
- Van Seters, John. *A Law Book for the Diaspora: Revision in the Study of the Covenant Code*. New York: Oxford University Press, 2003.
- Weinfeld, Moshe. *Deuteronomy and the Deuteronomistic School*. Winona Lake, Ind.; Eisenbrauns, 1992. Originally published in 1972.
- Westbrook, Raymond. "The Female Slave," in *Gender and Law in the Hebrew Bible and the Ancient Near East*, ed. Victor H. Matthews; Bernard M. Levinson; Tikva Frymer-Kensky, 214-238. Sheffield: Sheffield Academic Press, 1999.
- , *Old Babylonian Marriage Law*. AfO 23. Horn, Austria: Berger & Söhne, 1988.

Wunsch, Cornelia. *Urkunden zum Ehe-, Vermögens- und Erbrecht aus verschiedenen neubabylonischen Archiven*. Babylonische Archive 2; Dresden: ISLET, 2003.

Zakovitch, Yair. "The Woman's Rights in the Biblical Law of Divorce," *Jewish Law Annual* 4 (1981): 28-46.