

Women in Hebrew and Ancient Near Eastern Law

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The place of women in ancient history is a subject of much scholarly interest and debate. This paper approaches the issue by examining the laws of ancient Israel, along with other ancient law codes such as the Code of Hammurabi, the Laws of Urnammu, Lipit-Ishtar, Eshnunna, Hittite, Middle Assyrian, etc. Because laws reflect the values of the societies which developed them, they can be beneficial in assessing how women functioned and were esteemed within those cultures.

A major consensus among scholars and students of ancient studies is that women in ancient times were second class, oppressed, and subservient to men. This paper approaches the subject of the status of women anciently by examining the laws involving women in Hebrew law as found in the Old Testament, and in other law codes of the ancient Near East. Such topics as marriage and divorce, vows, widowhood, dowries, inheritance rights, and laws of sexual purity—including incest, rape, and adultery—are all examined.

Etan Levine calls for a “holistic approach to history whereby women, as well as men, are the subjects of inquiry and the measures of significance.”¹ He also calls for a different approach than that of scholarly tradition which either misunderstands or ignores

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¹ Etan Levine, “On Exodus 21, 10 ‘Onah and Biblical Marriage,” *Zeitschrift Für Altorientalische und Biblische Rechtsgeschichte* 5 (1999): 133.

women. Levine seems unable, however, to view the status of women beyond that found in former scholarship, based on four main criteria. First, in Levine's view, the Hebrew word *bet'ab*, meaning the father's or patriarch's house, automatically indicates the inferior status of the wife. The second deals with the terms "give a wife" and "take a wife," which Levine feels make the woman an object in marriage. A third criteria that Levine feels indicates the subservience of women is the purchase of a wife, which in his view then established the power of the husband over the wife. Fourth, the husband was *ba'al*, or master, lord and owner of his wife, a wife being listed among her husband's possessions.² But do these interpretations irrefutably signify the inferior status of women anciently?

Concerning this topic, examples of scholarly opinions include: "The dominant impression left by our early Jewish sources is of a very patriarchal society that limited women's roles and functions to the home."³ In another scholarly opinion: "If one were to look at scripture alone, it would seem that marriage is a right exercised by a man and that a woman he marries is simply there for his use."⁴

These perspectives reflect the viewpoint that male dominance in a society inevitably indicates female inferiority and subservience. But is that assumption, so pervasive within the study of women in ancient times, accurate? Is there another way to view ancient society?

Although most scholars concur with the opinions previously cited, some do not. Carol Meyers offers a different perspective of the nature of relationships in the ancient world. In her opinion,

² *Ibid.*, 135, 136.

³ "Women NT," in vol. 6 of *The Anchor Bible Dictionary*, ed. David Noel Freedman (New York: Doubleday, 1992), 957–8.

⁴ David Novak, *Covenantal Rights: A Study in Jewish Political Theory* (Princeton, New Jersey: Princeton University Press, 2000), 133.

women were a vital, intricate part of the fabric of ancient life. She warns against judging ancient history by modern assumptions and standards:

Just as the family was inextricably connected with its landholdings, so too were individual family members economically and psychologically embedded in the domestic group. . . .⁵ In the merging of the self with family, one can observe a collective, group-oriented mind-set, with the welfare in the individual inseparable from that of the living group. . . . In assessing the participation of adult woman in family labor, it is important to avoid the trap of looking at female household work as somehow less important than male tasks. . . . [B]oth males and females worked in the household . . . the boundaries of a woman's world were virtually the same as those of a man's in . . . early Israel. . . .⁶ Men's and women's labors together were marked by their . . . interdependence.⁷

Scholars often comment on the isolation of women within the confines of their own homes, as noted earlier. But Meyers refutes this:

Women . . . were hardly a segregated or isolated subset of the family household. . . . Enmeshed as they were in the larger kinship community, the activities of the household members were hardly contained by the family household. . . . The spheres of activity of a family household transcended its own persons and property. *The affairs of household thus took on a public character.*⁸

Meyer's explanation of the biblical term for family unity—*bet 'ab*, or father's house—differs from that expressed by Levine. In

⁵ Carol Meyers, "The Family in Early Israel," in *Families in Ancient Israel* (Louisville, Kentucky: Westminster John Knox, 1997), 21.

⁶ *Ibid.*, 24–25.

⁷ *Ibid.*, 27.

⁸ *Ibid.*, 38, 40; italics added.

her opinion, *bet 'ab* “refers to the descent reckoning along male lines but not necessarily to male dominance in household functioning,” which she feels points to the high level of gender interdependence that existed within the ancient Hebrew family.

Meyer’s ideas present a very different picture than most scholarly research on the ancient world which tends to view ancient history from two main assumptions: first, a woman was confined to home doing less important things than a man; and second, if a woman was part of a family with a man at the head, she was automatically oppressed. But are these assumptions correct? Were women as a rule isolated, confined, and subservient in the ancient world? This study attempts to find answers to this question by examining Hebrew and other ancient Near Eastern laws from the standpoint that the laws of a society reveal its values. These laws yield strong evidences that women in ancient society may not have been universally viewed or treated in that manner, but instead were seen as an integral and valued part of the family and community.

Some modern scholars note that the codes found in the Hebrew Bible were addressed only to men, concluding that the codes were solely concerned with the rights of males, excluding and demeaning women. The purpose of this paper is to show that the ancient law codes, principally Hebrew law, can also be viewed from a different perspective. Instead of establishing male superiority, these provisions addressed the stewardship and responsibility of a man to his family, instead of simply establishing male superiority. When viewed in this light, men were addressed by God as the heads of their families with a divine mandate to provide for their temporal and spiritual well-being and conduct. Fathers then, were accountable for their families to God and were accountable to their families to lead, protect, and provide; they were also responsible for the protection of their holiness. Within this perspective, women were not inferior or subordinate. They held an equal place in the family and in society, and were protected and valued.

Much has been said among scholars concerning comparisons between ancient Near Eastern and Hebrew laws. According to one scholar, “the most fruitful of these studies have been those which refrained from allowing the many analogues and similarities between biblical literature and other ancient Near Eastern texts to obscure the significant distinctions between them.”⁹ In this paper, I attempt to contrast the similarities and differences between Hebrew and other ancient law codes. Though there are numerous similarities in the laws, but in many instances the intent of Hebrew law transcends that of the laws of its surrounding cultures, including the place of women within the codes.

Marriage and Divorce

Marriage in antiquity is typically seen by scholars as a mere legal contract. The concept of marriage by purchase was first initiated by a scholar, P. Koschaker in 1917, and is still the most commonly accepted view.¹⁰ In this case, the bride was considered to be purchased by the groom by the payment of a brideprice. She was then considered to be his property to be disposed of at will. Ruth 4, where Boaz stated that he had purchased Ruth to be his wife, and Genesis 31, in which Leah and Rachel protested their father treating them as foreigners, or less than daughters, are usually cited as evidence. Yet other scholars, such as Gordon Hugenberger, contend this theory by arguing that marriage was a sacred covenant in Hebrew society, not simply a purchase.

Various evidences exist within the Bible that marriage was more than a legal contract. The main evidence is found in the marriage of Adam and Eve. The text reads, “Therefore a man shall

⁹ Levine, 133–64.

¹⁰ Raymond Westbrook, *Old Babylonian Marriage Law* (A-3580 Horn, Austria: Verlag Ferdinand Berger & Sohne, 1988), 7; see also Gordon P. Hugenberger, *Marriage as a Covenant* (Grand Rapids, Michigan: Baker, 1988), 244.

leave his father and his mother, and shall cleave unto his wife: and they shall be one flesh” (Gen. 2:24). Malachi referred to marriage being a sacred covenant. His message was addressed to husbands, reminding them that God is witness in a marriage, with a wife as a man’s companion, or “the wife of thy covenant.” Malachi testified that God hates “putting away” (Mal. 2:14–16). His words—“did not he make one?” (Mal. 2:15)—recall the original law of marriage in Genesis for a man and woman to be “one flesh.”

Christ also quoted Genesis when he was approached by the Pharisees with the question, “Is it lawful for a man to put away his wife for every cause?”¹¹ He replied:

Have ye not read, that he which made them at the beginning made them male and female, and said, For this cause shall a man leave father and mother, and shall cleave to his wife: and they twain shall be one flesh? Wherefore they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder (Matt. 19:4–6; see also Mark 10:2–12).

In response, they confronted Jesus with the question: “Why did Moses command to give a writing of divorcement, and to put her away?” (Matt. 19:7). The Pharisees spoke as if Deuteronomy 24:1–4 was Moses’ command to divorce. But Christ did not concur: “Moses because of the hardness of your hearts suffered you to put away your wives: but from the beginning it was not so.” He then stated divine law forbidding divorce except in cases of fornication (Matt. 19:7–9). This appears to concur with the provision concerning divorce found in Deuteronomy 24:1–4.

When Jesus counseled his apostles privately after the public confrontation with the Pharisees, he appeared to acknowledge the ability of either spouse to divorce: “Whosoever shall put away his wife, and marry another, committeth adultery against her. And if a woman shall put away her husband, and be married to another,

¹¹ Matthew adds the phrase “for every cause”; Mark does not.

she committeth adultery” (Mark 10:11–12). Paul also, in his admonition to the Corinthians, stated: “Let not the wife depart from her husband . . . and let not the husband put away his wife” (1 Cor. 7:10–11). These New Testament references to a woman initiating divorce are attributed by scholars to the gentile audience that Mark and Paul were addressing.¹²

In his study, Hugenberger offers the opinion “that the Old Testament viewed marriage as a divinely protected covenant between husband and wife,” a notion that is ignored or dismissed in most studies of ancient Hebrew marriage.¹³ Falk also views marriage as a covenant, and refers to Ezekiel 16:8 and Hosea 2:19–20 as evidence reflecting the practice of an oath and a covenant being required for marriage to be a general custom, as well as symbolism of God’s relationship with Israel.¹⁴ This is perhaps a major reason divorce did not figure prominently in the statutes of Moses, a law intended for a covenant people. As clarified by Jesus in his answer to the Pharisees centuries later, Moses suffered divorce only because of the hardness of the people. Marriage was intended to be for the Israelite nation as it had been originally given to Adam and Eve by God—a sacred covenant not to be broken (Mark 10:3–12).

Scholars acknowledge the absence of biblical sources on divorce.¹⁵ Deuteronomy 24:1–4 has been presumed by some scholars to be the Jewish law of divorce, but that view has been abandoned by most for the prevailing view is that the husband alone could terminate the marriage.¹⁶ Blekinsopp says that, “[the] Bible never excludes the possibility of divorce by the wife, but

¹² John J. Collins, “Marriage, Divorce, and Family in Second Temple Judaism,” in *Families in Ancient Israel*, (Louisville, Kentucky: Westminster John Knox, 1997), 120.

¹³ Hugenberger, 338

¹⁴ Ze’ev W. Falk, *Hebrew Law in Biblical Times* (Provo, Utah: Brigham Young University Press, 2001), 146.

¹⁵ Joseph Blekinsopp, “The Family in First Temple Israel,” in *Families in Ancient Israel* (Louisville, Kentucky: Westminster John Knox, 1997), 65.

¹⁶ *Ibid.*

neither does it ever envisage it, and so most commentators have assumed that no such right existed.”¹⁷

There is evidence that women could initiate divorce in Hebrew society. In the laws in the Fifth century B.C. Jewish settlement of Elephantine in Egypt, either partner could divorce without a stated reason. This evidence is usually attributed by scholars to local Egyptian influence and is dismissed as evidence of standard Israelite practice.¹⁸ But several scholars question that assumption. E. Lipinski states that divorce by the woman appears in Egyptian law only during the Persian period and instead attributes the practice to Hebrew influence.¹⁹ Jacob Rabinowitz also concludes that the Egyptians copied from the Jews.²⁰

The evidence found in the Aramaic papyri allowing for divorce by either husband or wife should not be dismissed so lightly in scholarly research. This presents needed evidence that the Jews in Egypt may not have deviated from their original laws but were practicing them as their ancestors in Israel did. As stated by Hugenberger, “one cannot assume without further proof that it was a legal innovation for the Jews at Elephantine to permit their women to initiate divorce.”²¹

The law as stated in Deuteronomy 24:1–4 appears to have been an attempt to curtail divorce—it was to be permitted only in cases of “uncleanness,” or indecency. The law also protected the woman if her husband divorced her. He was required to provide her with a written document as evidence which then enabled the woman to marry again. Deuteronomy 24 emphasized the woman’s right to proof of divorce. It also restricted a man from remarrying his divorced wife. This appears to have had economic motives: if

¹⁷ Collins, 121.

¹⁸ Blenkinsopp, 65; see also Collins, 115.

¹⁹ Edward Lipinski, “The Wife’s Right to Divorce in the Light of an Ancient Near Eastern Tradition,” *Jewish Law Annual* 4 (1981): 9–27.

²⁰ Jacob J. Rabinowitz, “Marriage Contracts in Ancient Egypt in the Light of Jewish Sources,” *HTR* 46 (1953): 91–97.

²¹ Hugenberger, 318.

a man took his former wife again, he might have stood to profit twice financially. This law prevented that from occurring.

If Deuteronomy 24:1 had been a provision permitting only a man to divorce, the text offers no conclusive evidence of this. The law clearly called for the husband's accountability. It does not appear that it excused or condoned him in breaking his vow of marriage. Instead, the law given in Deuteronomy 24 treated divorce as a serious action reserved only for cases of serious transgression.

The act of divorce was not without a financial penalty, and involved the husband's responsibility to provide for the economic needs of his wife and any children. Usually the woman was entitled to take with her the brideprice and dowry. Perdue states that "a bill of divorce granted the woman freedom to remarry, and she was dismissed by her husband with the economic protection of a marriage fee and perhaps a dowry."²² In the Elephantine divorce documents, either husband or wife was severely fined if they initiated the action.²³ This appears to have been intended to be a deterrent to divorce. According to Perdue:

In ancient Israel, laws governing divorce were designed primarily to protect the economic interests and rights of both the households that had arranged the marriage and the divorced couple themselves. . . . Yet the wife's interests and rights, along with those of her household, were also guarded. She was protected against slander, which would shame her and her household. She also was provided the legal writ that allowed her to return to her paternal household after her divorce and then to remarry, while her husband's *mohar* and perhaps her family's bridal dowry provided her some economic support.²⁴

²² Leo G. Perdue, "The Household, Old Testament Theology, and Contemporary Hermeneutics," in *Families in Ancient Israel* (Louisville, Kentucky: Westminster John Knox, 1997), 181.

²³ *Ibid.*, 187.

²⁴ *Ibid.*

Later Jewish law, found in the Talmud and the Mishnah, restricted the initiation of divorce to the husband. In his assessment, John Collins quotes Mishnaic law: “A woman [was] divorced irrespective of her will; a man [divorced] of his own accord.”²⁵ Collins explains, “The Mishnah also [recognized] that a woman may have [had] a right to a divorce under certain circumstances, and that she [could] appeal to the courts to require her husband to grant her a divorce. She [did] not, however, have the power to divorce her husband directly.”²⁶ He points out, however, that in the debate on justified reasons for divorce in the first century B.C., neither Rabbi Hillel, who advocated divorce by the man for any reason, nor Akiba, who reserved divorce only for cases involving fornication, “exempted the man from paying the divorce settlement.”²⁷ No matter the reason, a man was required to provide economic support for a divorced wife.

Divorce in other ancient Near Eastern laws is also the subject of debate. Westbrook, in his study of Neo-Babylonian Marriage Laws, states, “The right of a wife to divorce her husband in Old Babylonian law has been the subject of considerable dispute,” with opinions ranging from no rights to equal rights for the wife.²⁸ Marriage contracts contained penalties for the husband if he divorced his wife, which usually involved a monetary payment. But the usual penalty stated for a wife who divorced her husband indicated capital punishment—she was to be bound and thrown into the water or thrown from a tower. These penalties were stated as possible future events, so it is not possible to determine if the penalty was actually carried out from the documents. Also, in the divorce documents included in Westbrook’s *Old Babylonian*

²⁵ Collins, 120.

²⁶ *Ibid.*, 120, 121.

²⁷ *Ibid.*, 118.

²⁸ Westbrook, *Old Babylonian Marriage Law*, 79.

Marriage Law, none deal with a wife who actually divorced her husband, only the husband who divorced his wife.²⁹

Within the marriage documents, there were various penalties listed for divorce by the woman besides capital punishment. Several stated the penalty that the woman would be sold into slavery if she divorced her husband.³⁰ In another marriage document from Isin, the woman would incur a substantial financial penalty. If she chose to divorce her husband, she would forfeit house, field and property, and pay one-third a mina of silver.³¹ A similar penalty for either spouse is found again in a marriage document from Nippur. If either husband or wife divorced the other, they were to forfeit house, field, and orchard.³² Another marriage document stated that if the wife initiated divorce, she forfeited her adopted daughter; but if the husband divorced her, she could take her daughter with her.³³

A substantial penalty was to be paid by a divorcing husband in a marriage document from Kish. If he initiated divorce, he would forfeit “the household that they will build up” and also “pay half a mina of silver.” She, however, would be bound and thrown into the water if she divorced him.³⁴ In another document, the two wives were entitled to keep everything they brought in to their husband’s house, plus be paid a given amount of silver.³⁵ A similar document stipulated that if the husband chose to divorce, he was to lose his right to his house, and, as an added penalty, he would also lose his children.³⁶ An additional document included a

²⁹ *Ibid.*, 117, 119, 122, 123, regarding CT 2 44; CT 6 26a; CT 8 7b; CT 48 50; CT 48 51; CT 48 52, CT 48 55.

³⁰ *Ibid.*, 115, 124, regarding BE 6/2 48; CT 48 61.

³¹ *Ibid.*, 116, regarding BIN 7 173.

³² *Ibid.*, 129, regarding PBS 8/2 155.

³³ *Ibid.*, 136, regarding VAS 18 114.

³⁴ *Ibid.*, 129, regarding PRAK 1 B 17.

³⁵ *Ibid.*, 131, regarding TIM 4 46.

³⁶ *Ibid.*, 138, regarding YOS 14 344; see also YOS 15 73.

financial penalty for the husband if he chose to divorce, but no penalty was stipulated for the wife.³⁷ It can be observed from these documents that there appear to have been no fixed penalties. They were individualized according to the wishes of those who drew up the contracts.

One document from Sippar seems to have been drawn up later than the actual divorce. It announced that the husband had divorced the wife, and that, if another man married her, the former husband would not raise claims. A statement that both had sworn the oath of Shamash was included.³⁸ This resembles Deuteronomy 24, in which a woman was entitled to a written document of divorce that relinquished the husband's right to her, and enabled her to marry another man.

Old Babylonian divorce documents referred to cutting the wife's hem.³⁹ One fascinating document from Sippar tells of a husband who cut the hem of his wife and subsequently did not support her or her children. He apparently had been trying to "make claims and demands, from chaff to gold" from her, which were later rejected by the judges.⁴⁰ This document is very significant in that it shows the obligations of a man to provide support for his family, even after divorce. This concept is found again in a document from Larsa—several witnesses testified that after a husband had divorced his wife, he had not given her a food and clothing allowance.⁴¹ These documents are also noteworthy to prove that the divorced wife had the right to recourse in a court of law. The code of Hammurabi contains several provisions in which it appears that a woman could initiate divorce. CH 142 dealt with the right of a faithful woman to divorce her unfaithful husband and to return to her father's house. She declared that her husband could not have

³⁷ *Ibid.*, 130, regarding TCL I 61.

³⁸ *Ibid.*, 128, regarding Meissner BAP 91.

³⁹ *Ibid.*, regarding Newell 1900.

⁴⁰ *Ibid.*, 134, regarding VAS 8 9–10.

⁴¹ *Ibid.*, 135, regarding VAS 18 1.

marital relations with her and went to the authorities, who investigated her record. If she was proven not to be at fault, even though her husband had been disparaging her greatly, then that woman incurred no blame—she could take her dowry and return to her father's house. Note the similarity to Deuteronomy 22:13–19, but in that case the husband was not allowed to divorce her—he was required by law to provide for her for life. CH 149 covered the case of a diseased wife whose husband took another wife. She had the right to take her dowry and return to her father's house.

A husband was justified in divorcing his wife in CH 141 if she had made up her mind to leave in order to engage in business, thus neglecting her house and humiliating her husband. A legal investigation was mandatory, for the allegations must be proven before she could be convicted. In that case, the husband could choose whether to divorce her or not; if he did, he was not required to give her a divorce settlement. It appears that in this case the woman was able to provide for herself. He could also decide to keep her while taking another wife—the first wife remained in the home as a servant or slave. This provision illustrates that a wife had a responsibility to her husband and family—just as a husband had that responsibility.

Evidence of the significant monetary compensation due a divorced wife existed in the laws of Urnammu—sixty shekels of silver, or, if she was a former widow, thirty shekels (LU 9, 10). The code of Hammurabi envisioned several scenarios to guarantee the economic security of a divorced wife. In the first, a woman whose husband divorced her was entitled to take her dowry and also half the field, orchard, and property so that she could rear her children (CH 137). If she had no children, the husband owed her the full amount of her marriageprice and also her dowry before he was allowed to divorce her (CH 138). If there was no marriage price, he had to give sixty shekels of silver as a divorce settlement (CH 139). Class distinction was a consideration in the monetary

payment. If the husband was a peasant, he owed her only twenty shekels (CH 140). Law of Eshnunna 59 included a very severe penalty for a man who was divorcing a wife who had born him children and marrying another—he was to be driven from his house and from whatever he owned. The assumption here is that his wife and children were entitled to stay on the property, whereas he had to leave.

These documents show that marriage was highly valued in ancient society. The dissolution of a marriage was a very serious step—one that warranted serious consequences. This is clearly seen in the severe penalties attached. However, there are no indications that a woman actually suffered the death penalty if she initiated divorce. In fact, the documents list penalties other than death, such as loss of property, suggesting that the death penalty for divorce was not the common practice. The severity of the penalties also suggests that divorce was not prevalent or widely accepted in the ancient world. Both a husband and a wife were expected to fulfill their family responsibilities, indeed were legally obligated to do so. The obligations of a man to provide for the physical needs of his family are very apparent, continuing even after divorce.

While the ancient Near Eastern laws appear to be concerned with financial arrangements concerning marriage and divorce, these concerns are not readily apparent in the biblical codes. But this does not constitute proof that they were not part of Hebrew society, or that a Hebrew woman was more vulnerable than women of the surrounding societies. Also, while the law codes in the Old Testament provided for the use of a divorce document, they were silent concerning the use of marriage contracts. But the Elephantine papyri did use marriage contracts and provided guarantees for the woman's economic security. Also, a study of Israelite marriage, gleaned from the biblical codes and prophetic statements, reveals that it was considered to be much more than a mere financial arrangement: marriage was a sacred, binding covenant.

Brideprice and Dowry

Evidences of the practice among the Hebrews of the payment of a brideprice to the family of the bride and the giving of a dowry by the bride's family can be found throughout the Old Testament. The brideprice was a payment made by the groom to his prospective bride's father on the eve of their betrothal. The dowry was property given by the bride's father to his daughter upon her marriage. Although at first glance there appear to be no specific provisions in the Bible dealing with dowry or brideprice in connection with marriage, Exodus 22:17 referred to a payment to be made to a bride's father, "according to the dowry of virgins."⁴² A similar provision found in Deuteronomy gave fifty shekels of silver as the price to be paid to the father (Deut. 22:28–29).

One example of the use of brideprice and dowry is found in Rebecca's marriage to Isaac, in which Rebecca and her family were presented with presents by the family of her prospective husband (Gen. 24:22, 30, 47, 53). Another example is the marriages of Leah and Rachel to Jacob. In Jacob's case, the payment of a brideprice was taken care of by his servitude to Laban. When they were given no dowry by their father, Leah and Rachel were angry, "Is there yet any portion or inheritance for us in our father's house?" They accused their father of treating them as foreigners, or less than daughters (Genesis 31:14). Proverbs 31 refers to the high price of the virtuous woman, a possible reference to the brideprice (Proverbs 31:10). According to Westbrook, the reason the term for dowry occurs only two or three times in the Bible "lies in the very centrality of the institution: for the biblical authors the dowry was a common, everyday thing; it needed mention only in circumstances that made it unusual."⁴³

⁴² As pointed out in a conversation with David R. Seely (Brigham Young University).

⁴³ Raymond Westbrook, *Property and the Family in Biblical Law* (Sheffield: JSOT, 1991), 142.

Even if the evidence is scarce within the Bible, dowry and brideprice were an integral part of Jewish marriage and divorce documents in the Elephantine papyri. In two of the three Elephantine marriage contracts, the brideprice, or *mohar*, was paid by the groom to the bride's father and returned by the father to the bride, included with the dowry. In Yaron's opinion, this means "that the nominal recipient of the brideprice [derived] no actual benefit from it."⁴⁴

The marriage contracts found in the Elephantine papyri mentioned the brideprice and the dowry, as well as cash, clothing, and household items. But it is interesting to note that these contracts did not include all of the bride's property. Two of the brides had previously been deeded houses by their fathers which are not listed in the marriage contracts. Yaron interprets this to mean that "the need to safeguard the rights of the wife was not felt in the case of land, where there were other documents, deeds of sale or gift, to prove her title."⁴⁵ There is no evidence in the documents that upon the marriage, the houses automatically became the property of the husband. Because they were not included in the marriage contract, they appear to be outside the husband's ownership.

It is difficult to determine from the documents if the property brought into the marriage by the wife became the husband's property, or if it remained separate—scholars differ greatly in their opinions on this issue. Yaron points to a provision in one of the marriage documents in which the husband declared that he would not take his goods and possessions from his wife. If he did, he was required to pay two hundred shekels. This meant that the wife must "concur in the alienations of any property by her husband."⁴⁶ Two hundred shekels would have been a huge amount in a society which Yaron concludes did not have much cash.⁴⁷

⁴⁴ Reuven Yaron, *The Law of the Aramaic Papyri* (Oxford: Clarendon, 1961), 48.

⁴⁵ *Ibid.*, 50–51.

⁴⁶ *Ibid.*, 52.

⁴⁷ *Ibid.*, 59.

If either party divorced the other, the wife was entitled to the dowry. According to Yaron:

It is for this purpose that the detailed valuation is included in the marriage contract. At the time of divorce the objects used by the wife—whether initially brought in by her or subsequently acquired in the course of the marriage—[were] estimated, and the husband [had] to cover any deficiency in the total; he [also had] to repay the cash he had received. It [was] desired to ensure that on the dissolution of the marriage the wife [would] leave with belongings equal in value to those she brought in.⁴⁸

Ancient Near Eastern laws are abundant concerning the economic rights of women within marriage and divorce. Scholars state that the dowry became part of the husband's estate, but was apparently kept separate for her maintenance in case of divorce or the husband's death, then divided among her children after her death. If the wife had borne no children, the dowry was to be returned to her father's house. The laws did not anticipate the right of the husband to hold an exclusive power over her property, and he was not entitled to it after her death, even if there were no children (CH 162, 163, 164, 173, 174, 176A).

Ancient Near Eastern laws strove to regulate the brideprice given by the prospective husband to the bride's parents. In the laws of Lipi-Ishtar, in the event that a marriage agreement was broken, either by the groom or the parents, the father of the prospective bride was to return twofold the presents brought at betrothal (LI 15, LI 29). Comparable provisions are found throughout the ancient law codes—Hittite Law (HL 28, 29, 30), the Code of Hammurabi (CH 159, 160, 161), the Middle Assyrian Laws (MAL A27, A29, A30, A31, A42, A43), Neo-Babylonian Law (NBL 9, 10, 11, 12, 13), and the laws of Gortyn (G 9). The codes also regulated

⁴⁸ *Ibid.*, 59–60.

the distribution of the brideprice and dowry in cases where the father had died. For instance, in the Code of Hammurabi, a girl who was unmarried at the death of her father was entitled to be provided a dowry by her brothers (CH 184).

Significantly, much of ancient law was concerned with the economics of marriage, of which the economic rights of women were a major part. Even when the marriage was severed, the woman was entitled to economic protection. There is ample evidence that the laws were concerned with widowed and divorced women, ensuring that they were not left to become destitute.

Vows

Hebrew law included provisions for the making and keeping of vows within a family relationship, between a husband and wife, and a father and unmarried daughter (Num. 30). Both men and women could make vows with God. These vows were considered sacred between an individual and God, occurring at the temple or tabernacle with the involvement of the priest, as seen in 1 Samuel. The making and keeping of vows was part of an Israelite marriage. Evidence of this is found in the story of Hannah in 1 Samuel. Her husband Elkanah went yearly to the tabernacle at Shiloh with his family. It is recorded that he gave his two wives portions for the payment of their vows, and also his sons and daughters. To Hannah, who was childless, he gave “a worthy portion,” perhaps more than the thirty shekels required for a woman (1 Sam. 1:4–5).

In Numbers 30, a vow made by a married woman was to be ratified by her husband in order to be valid, or if a daughter was unmarried, her vow should be ratified by her father. If the husband or father heard the vow and assented by his silence, the vow stood. Or he could learn of it and choose to disallow the vow, in which case the vow would not stand. The woman was absolved, and the father held responsible: “The Lord shall forgive her,

because her father disallowed her” (Num. 30:5). But a husband or father must disallow on the same day he heard of the vow (Num. 30:8); and if this was the case, “the Lord shall forgive her” (Num. 30:12). Every vow and every binding oath must be established or voided by the father or husband of the woman. A binding oath was written down (Num. 30:13).⁴⁹ The man’s subsequent responsibility is stated clearly in verse 15: “But if he shall any ways make them void after that he hath heard them; then he shall bear her iniquity.”

This provision does not indicate that a man dictated his wife’s or daughter’s vows. The choice was hers to decide what vows she wished to make and when. She could make and keep her own vow without her father or husband ever knowing. But when he was informed by her, or became aware, his avowal or disavowal became essential. This act formed a partnership between them. Hannah’s vow to dedicate her son to the Lord was initially decided alone, and made at the tabernacle without her husband’s presence, the priest Eli being witness (1 Sam. 1:17). At some period, Elkanah became aware of her vow, for at the time she declined to go up to Shiloh until her son was weaned, he knew of the plan to consecrate their son to lifetime temple service. Elkanah then ratified her vow in his words, “Do what seemeth thee good” (1 Sam. 1:22-23).

Leviticus 27 lists the monetary costs for the taking of vows to be offered at the temple or tabernacle before the priest. Though sacred in nature, vows appear to be monetary, involving the consecration of persons and property. The psalmist wrote of the payment of vows to the Lord: “Pay thy vows to the most High.” (Ps. 50:14; see also Pss. 22:25; 76:11; 116:14). Estimates were given for payment in Leviticus 27 according to an individual’s gender, age, and financial situation (Lev. 27:8). Males aged twenty to sixty were to pay fifty shekels of silver, females thirty shekels, and male

⁴⁹ As explained by John Welch in a class discussion (Brigham Young University).

children aged five to twenty paid twenty shekels, females ten shekels. Very young children, ages one month to five, were included—a male gave five shekels, a female gave three shekels. Males over sixty paid fifteen and females paid ten. This could be adjusted according to a person's need. The estimates given in this chapter have been used as evidence that a woman was worth less than a man, but there seems to be no real connection. According to Carol Meyers, “[t]hat passage, typically read as indicative that males were valued above females, actually is a very different kind of text . . . it contains valuations that allow for the redemption of property or persons from a shrine.”⁵⁰

An interesting reference to vows is found in Jeremiah 44. Women had made vows involving the practice of idolatry. Jeremiah confronted them and their husbands. “Then all the *men which knew* that their wives had burned incense unto other gods, and all the women that stood by,” refused to hearken to his counsel to repent (Jer. 44:15, italics added). The women responded defiantly: “But we will certainly do whatsoever thing goeth forth out of our own mouth,” claiming they were better off when practicing idolatry. It is important to note that the women stated that when they engaged in these idolatrous practices, they did not do so without their men (Jer. 44:17, 19).

Jeremiah's response was directed to the husbands, “Ye and your wives have both spoken with your mouths” (Jer. 44:25). Both were accountable, but the men who knew of the unrighteous vows of their wives were held responsible, both for the vows made by their wives and their own. The punishment spoken by Jeremiah appears to be directed to the men—“and all the men of Judah that are in the land of Egypt shall be consumed by the sword and by the famine” (Jer. 44:27). This seems to reflect the same responsibility found in Numbers 30 in which a husband bore the responsibility for his wife's vow.

⁵⁰ Meyers, 33.

Clearly the responsibility of a husband and father to be involved in the religious actions of his wife and daughters was to be accomplished only in righteousness. Evidence of this is found in the Dead Sea Scrolls, which include a reference to “any binding oath by which a person takes upon himself to keep a commandment of the Torah.” An oath was only valid if it was in accordance with God’s commandments. The passage further clarified a man’s responsibility for the oath of his wife or daughter: “If [the oath] is to transgress the covenant, let him annul it and not allow it to stand.” It was within his bounds to annul only if it transgressed the covenant.⁵¹ This brings possible clarification of the phrase found in Numbers 30, in which a man bore the iniquity of his wife or daughter (Num. 30:15). If her oath transgressed the covenant, and her father or husband learned of it and still allowed it to stand, then he was to bear the responsibility.⁵²

Sexual Purity

This section poses three crucial questions. Were Hebrew laws governing sexual purity more restrictive than those of their surrounding cultures? Were these laws more restrictive for women than for men? Can the laws be interpreted as discriminating against women?

⁵¹ Joseph M. Baumgarten, *Qumran Cave 4. XIII: The Damascus Document (4Q266-273)* DJD 18 (Oxford: Clarendon, 1996), 156–7; 178–9.

⁵² Ancient Near Eastern law does not describe the taking of vows in the same manner as in Hebrew law. But there are references to oaths undertaken at the temple in the name of the god, and a person undergoing the divine river ordeal. The divine river ordeal is used in the laws of Urnammu for a man accused by another of some wrong doing (LU 13), and a wife accused of fornication (LU 14). If the accused survived being thrown into the river, they were considered innocent, if they did not survive they were guilty. This is also in the code of Hammurabi in cases of adultery, and the swearing of an oath of innocence at the temple (CH 131, 132). The swearing of innocence and the river ordeal are found in Middle Assyrian laws A22, A24, and A47.

It is significant to note that the Hebrew codes contained in Leviticus 18 and 20 concerning sexual purity are addressed to the men. Commonly termed by scholars as the “incest codes,” these provisions meticulously prohibited certain relationships with close kin and were concerned with proper marriage relationships. They specify the responsibility of both men and women alike to be virtuous. Similar provisions prohibiting incest can be found in the ancient Near Eastern laws, but there are noticeable differences that will be discussed.

Hebrew law appears to be an attempt to separate the Israelites from the traditions and practices of the surrounding cultures. Leviticus 18 and 20 both conclude with Moses’ strict command to the Israelites to shun the customs of the nations which had inhabited the land before them. He defined their practices as abominations which had defiled the land and were abhorred by God (Lev. 18:24–30; 20:23). Clearly, the Israelites were to live in a different manner than the societies surrounding them. The various law codes reflect this difference.

Both Hebrew and Near Eastern codes were concerned with a man having sexual relations with his mother or stepmother. In Hittite Law, a man who engaged in sexual relations with his stepmother was not punished if his father was dead. But if his father was still living, it was a capital crime (HL 190). Hebrew law did not concern itself with whether or not the father was living—in either case, both the wife and her stepson were to be put to death (Lev. 20:11). The provision concerning sexual relations with a mother or stepmother in the code of Hammurabi is significantly similar to Hebrew law. If a man had sexual relations with his mother, even after the death of his father, both guilty parties were to be burned (CH 157). But sexual relations with a foster mother after the father’s death was not a capital offense, the punishment being disinheritance from the parental estate (CH 158).

Both Hebrew and ancient Near Eastern laws forbade sexual relations between a father and his daughter or daughter-in-law.

The punishment for incest with a daughter brought banishment for the father under the code of Hammurabi (CH 154). In this same law, the punishment for a man who had sexual relations with a daughter-in-law was to be “thrown into the water,” but he must be caught in the very act (CH 155). A father was forbidden to engage in sexual relations with his son’s betrothed wife. If he did, there would be a fine of thirty shekels of silver, and he would be ordered to restore her dowry so she would then be able to marry someone else (CH 156).

Another difference between Hebrew and ancient Near Eastern law concerned sexual relations with related women. Hittite law concerned itself with class status; the punishment was based on whether the woman was free or a slave. Hittite law allowed a free man to have sexual relations with a free woman, her sisters, and her mother as long as they did not live in the same household. But if the man engaged in these acts at the same location and was aware that the women were related, it was then a capital crime (HL 191). The situation was radically different if the woman involved was a slave. A father and his sons could have sexual relations with the same slave girl or harlot, and it was not a punishable offense. A man could engage in sexual intercourse with several slave girls, even if they were mother and daughter, regardless of where they lived (HL 194). Also in Hittite law, it was considered a capital crime for a man to approach his free wife’s daughter sexually. But it is assumed that the law did not apply if his wife was a slave (HL 195).

To contrast these codes with Hebrew law, a man was forbidden to take both a wife and her mother, or they were to be burnt with fire (Lev. 20:14). It was also unlawful to take a woman and her daughter, or her son’s or daughter’s daughter (Lev. 18:18). The intent of the Near Eastern laws indicates that slave women were viewed as property, and the principle of preserving their virtue was of no concern. In contrast, Hebrew law considered free and slave women as equals in terms of the preservation of their virtue.

A major distinction between Hebrew law and the other law codes is the fact that Hebrew laws addressing sexual purity did not involve vicarious punishment. As stated by Falk, “Hebrew courts did not inflict punishment on ascendants or descendants.”⁵³ A person was responsible for his own violation of the law, and family members were not punished for that crime. In contrast, the Middle Assyrian laws are saturated with vicarious punishments. For instance, if a man raped a free man’s daughter, the father could then take the wife of the rapist “and give her to be ravished.” He did not return her to her husband, but could keep her (MAL A55). This appears very harsh. However, another Middle Assyrian law appears to protect the wife of the ravisher. If the husband involved swore that the virgin involved gave herself willingly to him, he would then be allowed to pay the girl’s father the amount in silver of the value of a virgin, and the girl’s family could have no claim on his wife (MAL A56). In other words, if rape was not involved, the guilty man’s wife was protected from any punishment.

Class distinction does not seem to be a determining factor in Hebrew law, although it occurs quite prevalently in the other ancient Near Eastern laws. It is interesting to note, however, that one case in Hebrew law does concern itself with the class status of women. In the case of a betrothed bondmaid who had sexual relations with a man who was not her betrothed, her servitude became a factor in the judgment. The record specified that if she was not redeemed by her kin, she was not free, and was therefore to remain the property of her owner, and the two could not marry. Neither she nor the man were to be put to death as punishment for the crime (Lev. 19:20). But the offending man was to make atonement for his sin before the priest at the temple in order to be forgiven. It is clear that the act was an offense, even if the woman involved was a slave (Lev. 19:21–22). This is a major difference between Hebrew and other ancient law.

⁵³ Falk, 68.

The law found in Exodus 21:7–11 also reveals that coming from a differing class did not dissolve the rights of a woman. This provision involved the rights of a daughter who was to be sold by her father “to be a maidservant,” presumably for the payment of a debt. It was clearly for the intent of marriage. The woman was to become a member of the man’s family, either as his own wife or his son’s. In the event that he then decided not to take her to wife, he was forbidden by law to sell her as a slave. He was to allow her to be redeemed by her family. To go back on the agreement he had made with her father was not condoned, as seen in the wording that he had “dealt deceitfully with her.” The law also envisioned that this could have been a plural marriage. In that case, the husband was forbidden to lessen “her food, her raiment, and her duty of marriage.” Duty of marriage is commonly interpreted by scholars to mean the woman’s right to bear children. If he did not provide those three things for her, then she could leave without being redeemed by her family. Or if the man had betrothed her to his son, he was to “deal with her after the manner of daughters.” It is not clear if this involved his giving her a dowry as he would one of his own daughters. But clearly the law envisioned that the woman was to be treated as one of his family.

The violation of chastity was a serious offense in the law of Moses and also in other ancient Near Eastern laws. In a case of rape, Deuteronomy states, “[F]or as when a man riseth against his neighbour, and slayeth him, even so is this matter” (Deut. 22:26). This is significant—forcible violation of chastity was equivalent to murder in Hebrew law. This is a standard not found in Near Eastern law. Punishment was severe because the offense was usually considered a capital crime. Punishment could also include a monetary fine, but only in the case that the woman involved was not betrothed. In this case, the man was obligated by law to marry her. He was to pay a prescribed amount of money to the father, even if the father exercised another option and refused to give her to the man in marriage. In both cases, the amount to be paid by

the man was to be identical to the dowry of a virgin, which is quite significant (Deut. 22:28–29).

Monetary fines for the violation of chastity were more common in ancient Near Eastern laws. A monetary fine is listed in the laws of Lipit-Ishtar for a false accusation of immorality against the daughter of a free man, the fine amounted to ten shekels of silver (LI 33). Monetary fines are also listed in the laws of Gortyn as punishments in cases of adultery also—fifty to one hundred saters if the woman was free but only five if the woman was a slave (G 8). In most cases, however, both Hebrew and Near Eastern laws did not use monetary fines for the violation of chastity. Many involved the use of the death penalty.

Both Hebrew and ancient Near Eastern laws used capital punishment for violation of chastity. In both, the location of the crime was crucial in determining the severity of the punishment. Middle Assyrian laws distinguished between rape that occurred either in the open country, at night in the street, in a granary, or at a city festival. Similar distinctions are found in Deuteronomy 22. In this case, the city or the field were the noted locations. Location appears to help establish the punishment for the woman, but not the man; for in either case he was condemned to death. If the act occurred in the field, presumably a place where if she called for help she would not be heard, the woman was not to be punished (Deut. 22:23–26). It is clear from the codes that rape was a serious offense in both Hebrew and ancient Near Eastern laws. The laws of Eshnunna called for capital punishment for a man if he abducted and raped a woman, but no punishment for the woman is indicated (LE 26). The woman's innocence was also honored in the Code of Hammurabi. The rape of a betrothed virgin brought the death penalty for the man, but the woman was to go free (CH 130). These codes are the same as in Hebrew law, as noted in Deuteronomy 22:25–26.

Conduct short of sexual relations was also not tolerated in these ancient laws. It is significant to note that this is found in

Middle Assyrian law, which is considered by many to be the harshest against women. The code stated that if a free man treated the wife of another free man disrespectfully, the case could be brought to trial. After prosecution and conviction, the man was to be sentenced to have one finger cut off. And if he had gone so far as to kiss her, they were to draw his lower lip along the edge of the blade of an ax and cut it off (MAL A9). This was clearly a punishment in which the penalty was to fit the crime. He had used his lips to kiss the woman, so the offending lip was to be cut off. The courts also prosecuted a person for making false accusations of promiscuity against a married woman (MAL A17, 18). These provisions prove that even within the harshest set of laws there is evidence that married women were to be shown respect by men, and were to be protected from improper advances.

Adultery

Adultery with another man's wife was punishable by death in Hebrew law, with no extenuating circumstances presented (Deut. 22:22; Lev. 20:10). There is one difference between the law given in Leviticus and the later provision in Deuteronomy. Deuteronomy includes the phrase "if a man *be found* lying with a woman" (italics added). The death penalty for both men and women is also found in other Near Eastern laws. There is no evidence in Hebrew law that the husband determined the punishment for his adulterous wife, nor was he allowed to lessen or eliminate the punishment. This was to be handled by the courts. In contrast, both Hittite and Middle Assyrian laws allowed the punishment for an adulterous wife to be determined by her husband, who could choose to have his wife put to death or spare her life. Also, whatever punishment was inflicted on the wife also became the punishment for the offending man—whether it be death, mutilation, or freedom (MAL A15; HL 198). But a judicial procedure was to be part of the process. The king or judges were

involved in the prosecution and conviction, as is also found in Hittite law (HL 198), and in the Code of Hammurabi (CH 129). It is important to note that punishment for adultery was not to be performed at will by a husband with no authorities involved.

One consideration in adultery involved seduction by the woman. Seduction of another man by another man's wife in the law of Urnammu warranted the death penalty for the woman, whereas the man received no punishment (LU 7). The act was considered to be her responsibility. This was also the case in Middle Assyrian law, with the wife's punishment being determined by her husband. But a distinction such as seduction by the woman was not a factor in Hebrew law. Both sexes were held responsible.

Several Hebrew law codes concerning adultery warrant a more detailed examination in order to obtain a clearer picture of how women were regarded with respect to adultery. The case of the despised wife in Deuteronomy 22:13–19, of a woman divorced by her husband for uncleanness in Deuteronomy 24:1–4, and the case of the suspected adulteress found in Numbers 5:12–31 will be discussed and contrasted. The fact that these codes only address infidelity by a wife will be discussed at the end of this section.

Deuteronomy 22 presents a case in which a husband had married a woman and then despised her. He publicly slandered her by accusing her of being unchaste before marriage (Deut. 22:13–14). He apparently wanted to divorce her, so he attempted to find charges against her. This provision matches Deuteronomy 24:1–4, in which a man must find some uncleanness in his wife in order to divorce her. According to one scholar, Deuteronomy 22 suggests that a man must have a serious reason to divorce; he could not divorce just for just any reason.⁵⁴

The girl's father and mother brought the case before the elders at the city gate. This was a public affair. Her father then

⁵⁴ Blenkinsopp, 65.

accused the husband before the authorities of wrongful conduct: “[H]e hath given occasions of speech against her” (Deut. 22:17). Her father and mother testified of her innocence and presented physical proof of her virginity at the time of her marriage. The husband was then publicly chastised by the elders of the city, and fined one hundred shekels of silver—a much larger sum than a divorce settlement—that was to be given to her father. The reason for this is given in the record: “because he hath brought an evil name upon a virgin of Israel” (Deut. 22:19). He was forbidden by law to ever divorce her. By publicly slandering his wife, he had lessened the likelihood of a subsequent marriage for her; therefore he was obligated by law to provide for her for the rest of her life. The husband was clearly at fault, and his actions were not condoned. And because he had publicly defamed his wife, he was publicly condemned.

The next two verses in the text stand as a warning to all Israelites, and do not appear to be connected with the case in which the wife was clearly innocent. The message was clear. If a woman was not virtuous, there was a severe penalty—she would be taken by the men of her city and stoned at the door of her father’s house (Deut. 22:20–21). From this evidence, it can be seen that chastity was prized even above life in ancient Israel.

It is clearly shown in Hebrew law that the violation of chastity was an offense against God, not merely against the husband. Punishment against offenders was intended to purify the community and safeguard the covenant between God and Israel.⁵⁵ As stated by Falk, “[t]he individual who committed a grave offense was ‘cut off from the people;’ the nation was asked ‘to purge the evil from its midst’ and the blessing or curses of the covenant were addressed to every individual Israelite. If the community failed to call the culprit to account, however, it was held collectively responsible to the divine overlord.”⁵⁶ Understanding this aspect of

⁵⁵ Falk, 73.

⁵⁶ *Ibid.*, 67.

Hebrew law clarifies the stoning of the unchaste wife in Deuteronomy 22:13–21.

The case discussed in Deuteronomy 22:13–22 can be contrasted with the so-called divorce clause found two chapters later in Deuteronomy 24. In this provision, a man who had found some indecency in his wife was to give his wife a divorce and do nothing to inhibit her ability for remarriage. The text does not specify exactly what constituted indecency, which has given rise to centuries of debate. Could it be possible that the provision in Deuteronomy 24:1–4 giving a wife the right of divorce and remarriage was a direct outgrowth of the occasion that had warranted Deuteronomy 22:13–19? In that case, because the man had publicly defamed his wife with accusations that would have made it difficult for her to remarry anyone else, he was forbidden to divorce her, which was a talionic punishment, according to Falk.⁵⁷ Yet in Deuteronomy 24, with the case of the woman found by her husband to have committed some “uncleanness” or indecency, the law conferred on her the right to be able to marry again.

How is this to be reconciled with the severe penalty of Deuteronomy 22:20–21, in which a guilty wife was to be stoned? Her condemnation in that provision was that she had played the whore in her father’s house. The punishment was connected with her father, not her husband. In Leviticus 21:9, the daughter of a priest who profaned herself by playing the whore, also profaned her father, and she was to be burnt with fire. Deuteronomy 23:17 states, “[T]here shall be no whore of the daughters of Israel.” Leviticus 19:29 clarifies that this was also the father’s responsibility. A father was not to prostitute his daughter, “to cause her to be a whore.” This appears to refer to the practices of the surrounding idolatrous cultures, in which parents gave their daughters to the temple to serve as temple priestesses, which involved immorality and prostitution. Falk states: “The status of women in biblical law

⁵⁷ *Ibid.*, 152.

must be understood as a reaction against the worship of female goddesses and the role of women in fertility cults.⁵⁸ This can be found in the account of the sons of Eli who were accused of lying with the women who assembled at the door of the tabernacle. Had they, through their priestly authority, attempted this idolatrous practice? The record is not clear what the purpose of these women was. It appears they had some official function there, which the wicked priests corrupted. Their father condemned the actions of his sons and accused them of causing the people to transgress (1 Sam. 2:23-23).

Contrasting the account in Deuteronomy 22 with Numbers 5 can also help to bring a clearer understanding of the issue of adultery in Hebrew law. Numbers 5 differs greatly with Deuteronomy 22. Instead of being public, it depicts a private affair between a husband and wife. He suspected his wife of adultery, but she was not caught in the act, and there were no witnesses. In this case there was no public accusation and no public trial. The husband did not broadcast his suspicions, as the husband in Deuteronomy 22. Instead, the husband and wife went together to the tabernacle and presented themselves before the priest, who then brought her “before the Lord” (Num. 5:16). There appears to be rich symbolism in the jealousy offering of barley, to bring “iniquity to remembrance,” and the dust from the floor of the tabernacle, mixed with the holy water in an earthen vessel (Num. 5:15-18). The priest then charged her “by an oath,” that no harm would come to her if she was innocent. But if guilty, she faced divine punishment: “[T]he Lord make thee a curse and an oath among thy people, when the Lord doth make thy thigh to rot, and thy belly to swell” (Num. 5:21-22). The priest then wrote the curses in a book, and blotted them out with the bitter water, and had the woman drink it. The next step is significant. The couple quietly went home. There were no penalties for either party—

⁵⁸ *Ibid.*, 189.

not for false accusation by the husband nor punishment for adultery for the wife. If she was guilty, she lost her ability to procreate; if innocent, she could conceive (Num. 5:27–28). The event was religious, not legal, in nature, involving divine, not civil, judgment.

Hugenberger offers the opinion that the husband in Numbers 5 suspected his wife of adultery because of an unexpected pregnancy, making this case “not marital harmony so much as pater-nity.”⁵⁹ It is significant to note that pregnancy was a factor in the case of the suspected wife found in the Dead Sea Scrolls. The texts stated that a man was not to bring her before the priest “unless her blood does not come forth.” In other words, she had to have skipped a period. Claims of rape could also be a factor—line three of the translation states: “If she said I was raped.”⁶⁰

The taking of an oath in cases of adultery is found in ancient Near Eastern law. In the code of Hammurabi, a wife accused of adultery, who was not caught in the act, could “swear her innocence by an oath by the [god],” and then return to her house (CH 131, 132). This appears to be very similar to the account in Numbers 5.

Also interesting to note is the connection between the wording in Numbers 5 and Numbers 30. A penalty was attached to annulling the vows of a wife—“[T]hen he shall bear her iniquity” (Num. 30:15). Similar wording is found again at the end of Numbers 5, after the sacred ceremony in which the husband set his wife before the Lord: “[T]hen shall the man be guiltless from iniquity, and this woman shall bear her iniquity” (Num. 5:31). With this procedure before the priest at the tabernacle, the husband appears to absolve himself from responsibility for the actions of his wife.

A major difference between Hebrew law and other Near Eastern law is the fact that Hebrew law did not envision any right of a husband to determine or inflict punishment on his errant

⁵⁹ Hugenberger, 318.

⁶⁰ Baumgarten, 78–9; 152–3.

wife.⁶¹ The punishment of a wife by her husband is found in three Middle Assyrian laws. Two of the codes state that the punishment must be justified, and cannot be inflicted except in the presence of the authorities. But the third code appears contradictory to the previous two in that it allowed a husband to inflict further penalties on his wife that had not been previously specified on a tablet—such as plucking out her hair, twisting her ears, or striking her—with no liability being attached to the husband (MAL A57, 58, 59). These provisions appear to be an attempt to regulate any punishment of a wife by her husband. Even when the husband was granted the right by law to punish his wife, it was to be tightly regulated. It was not to be done in the privacy of their home, but in the presence of a court. Again, there are no provisions in Hebrew law that deal with public punitive punishment of a wife by her husband.

Another important concept to aid in understanding the status of women in Hebrew society involved the responsibility of a husband and father to his wife and daughters. While Hebrew law had no vicarious responsibility for an individual to suffer for the sins of another family member, there was vicarious liability for a husband and father.⁶² In relation to the women of his family, a man was held responsible for the righteousness of his wife's or daughter's vows, with any penalty attached to him. This accountability of the husband can also be seen in Jeremiah 44, in the vows of the idolatrous wives and their husbands, with the penalty apparently paid by the husbands (Jer. 44:27). Also, he was forbidden against prostituting his daughters (Lev. 19:29).⁶³ Thus, a man was responsible not only for his own sexual purity, but also for that

⁶¹ Falk, 124.

⁶² *Ibid.*, 68. This is found in the Book of Mormon—Lehi placed the cursing of the children of Laman and Lemuel upon the heads of their parents (2 Nephi 4:6); also in the Doctrine and Covenants—parents are responsible to teach children, or the sin is upon their heads (D&C 68:25).

⁶³ Falk, 68.

of his family. Modern interpretation focuses on the suppression of individual agency, and thus the subjugation of women. However, this must be used with caution in attempting to understand an ancient society, which operated on the concept of collective, not individual, responsibility.⁶⁴

The concept of the responsibility of the husband and father to his family can also be found in the other ancient law codes. In Old Babylonian Marriage Law, in a marriage contract from Sippar, the father of the bride was to be held “responsible for the performance of [his daughter’s] obligations and for her misdeeds,” not the new husband.⁶⁵ Also included in another marriage contract were the words of a father giving his daughter to a husband: “Any trouble with regard to her is her fault.”⁶⁶ Her conduct was apparently not the responsibility of her husband, but continued with the father, unless he absolved himself. Even after her marriage, the responsibility of a father to his daughter apparently did not terminate. Even in the case in which he relinquished responsibility for her conduct, he still appeared to refer to her personal accountability. It is interesting to note that the father does not turn the responsibility for her over to her husband. She, not her husband, is clearly responsible for her conduct. This challenges modern interpretations that a husband held total control over his wife.

Numbers 5:12–31, Deuteronomy 22:13–19, and Deuteronomy 24:1–4 only address a woman’s infidelity. But was a husband not also held accountable for fidelity? Hugenberger writes that some scholars believe that there is an “alleged existence of a double standard in Israel whereby a wife had to be exclusively loyal to her husband, while a husband was allowed to indulge in extramarital sex with unattached women without censure.”⁶⁷ This study concludes that both Hebrew and ancient Near Eastern laws put a high

⁶⁴ Falk, 67.

⁶⁵ Westbrook, *Old Babylonian Marriage Law*, 124, regarding CT 48 56.

⁶⁶ *Ibid.*, 134, regarding VAS 9 192–3.

⁶⁷ Hugenberger, 313.

value on chastity and fidelity, with both the man and the woman held accountable. On close examination, the laws do not appear to be more restrictive for women than for men. As seen in Hebrew law, even if the woman involved in sexual transgression was a slave, in which case the couple could not marry, the text is clear that the man had committed a sin and must atone for it (Lev. 19:20–22). If the woman involved was not betrothed, the man was then required to marry and support her for life, or pay a financial penalty if the father refused the marriage (Deut. 22:28–29). If the woman was betrothed, the offender warranted capital punishment, whether or not she had consented (Deut. 22:23–26). And in the case in which the woman was married, the man died as well as the woman (Deut. 22:22). Taken together, these provisions provide compelling proof of a man's accountability for his sexual conduct. This accountability of men toward women in sexual matters can be viewed as further indication of the woman's place of respect in society.

Widows

Provisions for the economic concerns of widows are found throughout ancient Near Eastern laws (MAL A35, A46; NBL 13; G 10; CH 177). The code of Hammurabi addressed a widow's right to stay in her husband's home and also protected a dead husband's estate in order to ensure the inheritance for his children (CH 172). In this case, a widow was required to obtain a judge's permission before remarrying. She and her new husband were then entrusted with her dead husband's estate. Note that the new husband could not take over the dead man's estate. Both were restricted from selling the household goods and legally required to protect the estate for her children's inheritance (CH 177).

The care of widows was an integral part of Hebrew law. Ideally, they were to be a part of family households, provided and cared for by their families, or, if that was not possible, by others

outside the family.⁶⁸ Divorced women were included in this care—as seen in Leviticus, where a priest's daughter, who was either widowed or divorced, and had returned to her father's house, was entitled to eat of her father's meat, the sacrificial offerings given to the priests for their use (Lev. 22:12–13). The entire community was responsible for the care of women who did not have husbands to provide for them. The tithe of every third year was to be given to widows and fatherless children. They were also to receive the excess of orchards, vineyards, and fields (Deut. 24:19–21; 26:12–13). The law also restricted the taking of a widow's raiment as payment for a pledge (Deut. 24:17). The law of levirate marriage, in which the brother of the dead husband was required to marry his wife, appears to be given partly to provide for the needs of a widow, but was also concerned with raising up posterity for the dead man. To forfeit this responsibility could lead to public disgrace. With a levirate marriage, the woman would continue to be provided for by her husband's family, and, if sons were born, they would then care for her (Deut. 25:5–10).

Ancient Near Eastern laws were also concerned with the economic needs of women whose husbands were missing or taken captive (LE 29, 30; also CH 133A, 133B; CH 134, CH 135, CH 136; MAL A36). Middle Assyrian law A45 envisioned several scenarios in which the economic needs of the wife of a missing husband were to be taken care of. If the woman did not have sufficient to live on, she could appeal to the community or palace. And if her husband had owned property, the judges could lease it to her for her maintenance for two years, after which time she was free to remarry. Her father could also support her.

Some modern interpretations of ancient conditions offer a bleak view of widowed or divorced women being forced into begging or prostitution in order to survive. However, an examination of the protections provided by law to widows, divorced women,

⁶⁸ Perdue, 167, 171.

and wives whose husbands are missing, proves that Israelite and other ancient societies did not envision leaving women vulnerable economically and made specific efforts to provide for their maintenance. Not only the woman's family but also the entire community was required by law to assume this responsibility.

Inheritance

Scholarly opinions vary widely on the issue of women's inheritance in ancient Israel. Westbrook presents his opinion that "[t]here is repeated evidence from the earliest cuneiform records onwards that a daughter could receive an inheritance from her father's estate, whether as sole heir or dividing with the other heirs. A daughter did not, therefore, lack the legal capacity to inherit."⁶⁹ But Westbrook disagrees somewhat with another scholarly opinion in which the dowry was a form of inheritance, on the basis that the dowry presented to the daughter by her father was a voluntary gift.⁷⁰

Numbers 27:1-11 and 36:1-13 include the public petition of the daughters of Zelophehad to have their dead father's inheritance in the promised land pass to them: "Why should the name of our father be done away from among his family, because he hath no son? Give unto us therefore a possession among the brethren of our father" (Num. 27:4). This was the first time in hundreds of years that land was to be included in a family's inheritance. These women must have felt they had a strong case to present to Moses, that of a right to their father's inheritance in the absence of sons.

Moses' answer to their request, given by divine revelation, became a "statute of judgment" (Num. 27:11). It was recorded that the Lord spoke unto Moses, saying, "The daughters of

⁶⁹ Westbrook, *Property and the Family in Biblical Law*, 158.

⁷⁰ *Ibid.*, 157.

Zelophehad speak right” (Num. 27:6–7). These women were free to choose their own marriage partner, even after the protest to Moses by their father’s brothers found in Numbers 36, the only stipulation being to choose marriage partners among their own kin in order to keep the inheritance within the tribe (Num. 36:6). Apparently their father’s brothers had no right or responsibility to arrange marriages for these women in the absence of their father.

The laws of Gortyn contain similar provisions to marry within the tribe. A groom-elect, or close kinsman, was to marry an heiress. Three of the laws dictate what happened if either party did not wish to marry the other. If there were no kinsman, the girl was free to marry whomever she wished among her tribe. If the groom-elect refused to marry her, the girl’s relatives could bring the matter to court, and the judge was to order the marriage to occur within two months. This did not occur if the girl did not wish to marry the groom-elect. The two apparently shared the property between them even before they married, and, if the marriage did not take place, the property was divided between them (G 30, 31, 32).

Under Hittite law, both of the prospective bride’s parents were involved in the negotiations (HL 29). This was also the case in the biblical marriage of Rebecca to Isaac. Rebecca’s mother and her brother were involved in the process. They both received gifts from Abraham’s servant, as well as Rebecca. And both of them asked Rebecca her wishes in the matter (Gen. 24:53–58).

What, if any, precedence was there in Hebrew history for daughters inheriting from their father’s estate that could have been known to the daughters of Zelophehad? Jacob’s wives Leah and Rachel expressed anger and disgust at not receiving a share in their father Laban’s estate—“Is there yet any portion or inheritance for us in our father’s house? Are we not counted of him strangers? For he hath sold us, and hath quite devoured also our money” (Gen. 31:14–16). This was a scathing assessment of their father.

They accused him of treating them more as strangers than daughters, even of selling them, and taking their rightful inheritance. This must have been the reason Rachel felt justified in taking some of her father's property—his images—when they left. She went to great lengths to hide them from him and succeeded (Gen. 31:19, 34–35). Job, who gave his three daughters an inheritance among their brothers, provides additional biblical evidence that women could inherit. In this instance, they inherited even though they had brothers (Job 42:15).

The inheritance of the daughters of Zelophehad is found again in the list of inheritances given to the children of Manasseh in Joshua 17. After listing the male children, the record states that “Zelophehad . . . had no sons, but daughters: and these are the names of his daughters, Mahlah, and Noah, Hoglah, Milcah, and Tirzah” (Josh. 17:3). Perhaps years after first presenting their case to Moses, the daughters repeated their claim before Eleazar the priest, Joshua, and the princes, reminding them of God's command to Moses to give them inheritance among their brethren (Josh. 17:4). The record then states that, “therefore according to the commandment of the Lord,” they were given inheritance, bringing the number of portions allotted to the tribe of Manasseh to ten (Josh. 17:5). The granting of the claims of these women to inherit became an integral part of the inheritances distributed to the tribe of Manasseh.

Manasseh was not the only tribe affected by a woman's landed inheritance. The recorded account of the inheritance of the tribe of Judah includes a man named Caleb and the land he gave to his daughter, who had been given in marriage to Caleb's brother's son Othniel. The record states that Achsah “moved” her new husband to ask her father for a field, after which her father asked her directly, “What wouldest thou?” She answered, “Give me a blessing; for thou hast given me a south land; give me also springs of water.” He then granted to her the upper and lower springs (Josh. 15:16–19; Judg. 1:12–15). The daughter Ashcah's inheritance is listed among the inheritances of Judah (Josh. 15:20).

It is significant that these two instances in which a daughter inherited land were carefully included in the record of the inheritances of the twelve tribes. Ashcah's land, and also the daughters of Zelophehad, were not included with their husband's, but were kept separate as inheritances under their father's names. There is no indication that these were dowries that were then absorbed into the estates of their husbands, even though they came from the same tribe. These inheritances clearly belonged to the women. Significantly, in both instances, the author of the record emphasizes that this was done according to the commandments of God (Josh. 15:13; Josh. 17:4). These cases significantly affected the division of inheritances in the Israelite promised land.

Other ancient Near Eastern laws acknowledged a daughter's right to inherit from her father's estate. Under the Code of Hammurabi, a priestess must have a written tablet from her father granting her permission to give her estate to whomever she pleased. If her father did not do this, her estate belonged to her brothers, but they were required to provide for her needs. They were instructed in the laws to "give her food, oil and clothing proportionate to the value of her share." This maintenance had to be satisfactory to her, or she could "give her field and orchard to any tenant" of her choice to support her. The property was hers to use as long as she lived, but she could never sell it, for it legally belonged to her brothers, unless she had been given written evidence from her father (CH 178).

One provision in the law of Lipit-Ishtar (1930 B.C.) granted a daughter an equal share along with her brothers in her father's estate (LI 22). The Code of Hammurabi envisioned a wife inheriting her husband's property, as found in CH 150, in which the husband presented a field, orchard, house, and goods to his wife, and made out a sealed document for her. After his death, her children could not then lay claim to that property and take it from her. When she wished, she could give her inheritance to the son of her choice, but she was forbidden by law to give it to anyone

outside the family. Under Hittite law, a mother could disinherit her sons (HL 171). A widow with no children in Neo-Babylonian law was entitled to take the size of her dowry from her husband's property. If he had given her a marriage-gift, she was entitled to that also. If she had no dowry, a judge appraised the property of her husband and appropriated something commensurate (NBL 12).

Under the Code of Hammurabi, a widow with minor children who wished to remarry must receive permission from the judges, who would examine her dead husband's estate, and entrust it to her and her new husband together. The authorities were to record a tablet with the widow and her new husband pledging to look after the estate and rear the children without selling any of the estate, which was to be kept in trust for the children's use (CH 177). Apparently the woman was to be very much involved in the ownership and maintenance of the property.

One Middle Assyrian law stated that any property a widow owned became completely her new husband's if she entered his house; however, if he entered her house, anything he brought became the woman's (MAL A35). In another Middle Assyrian law, a woman whose husband had not given her a deed stating that she could live in his house after his death was to be supported by her sons. It appears she did not own the property unless her husband had deeded it to her before his death, but the laws stipulate various circumstances for her care. She could live where she chose in a house of one of her sons, who was required to support her and treat her with the same consideration as his own wife. If the widow had no sons, she could choose to live with one of her husband's sons. The law also envisioned that one of these sons could marry her (MAL A46).

The widow is not mentioned in Numbers 27 and 36 as being an heir to her husband's property, which some scholars give as proof that in Hebrew law a widow did not inherit her husband's

estate.⁷¹ Naomi selling the property of her dead husband Elimelech to the next of kin is considered to be an exceptional case.⁷² In another argument, the land did not belong to Naomi, but she could act as agent for her dead husband and dispose of it, as found in the wording of Ruth 4:3—“Naomi selleth a parcel of land, which was our brother Elimelech’s.”⁷³ Another biblical account of a widow appearing to possess her husband’s estate is the widow from Shunam who appealed to the king to have her house and lands restored when she returned from the land of the Philistines. She appears to be entitled to inherit her late husband’s estate, as the king ordered, “restore all that was hers” (2 Kings 8:1–6).

Worthy of note is a provision found in the laws of Gortyn. As long as the father lived, he was restricted from selling or mortgaging the possessions that belonged to his children or his wife. Nor could a son sell his mother’s possessions. Included in the provision is this significant statement: “And if anyone should purchase or take on mortgage or accept a promise otherwise than is written in these writings, the property shall be in the power of the mother and wife” (G 22).

In his examination of the Elephantine documents, Yaron concludes that a daughter could inherit if there were no sons, as is found in Numbers 27; thus, a daughter or a sister was “not necessarily excluded from the inheritance.”⁷⁴ But it is not known from a study of the documents if a daughter or sister could compete with a son or brother. Yaron concludes that they could not because of the frequent occurrence of gifts, with women always the recipients. Yaron states, “This does suggest an inferiority in intestate succession which it was sought to overcome by resort to gifts. But . . . the small number of documents available demands

⁷¹ Ibid., 83.

⁷² Blenkinsopp, 55, 72.

⁷³ Westbrook, *Property and the Family in Biblical Law*, 80.

⁷⁴ Yaron, 67.

caution in our conclusions.⁷⁵ These documents also referred to the claims of the widow or widower. One marriage document stated that if the husband died without a male or female child, the wife was to have power over all his property, and if the wife died without bearing male or female children, her husband was to inherit her possessions.⁷⁶

In Hebrew and ancient Near Eastern laws dealing with inheritance, women can be seen to inherit, to own, and to maintain property that is separate from their husbands'. The husband did not possess total control over the assets of the family, but was held accountable by law to protect the property and inheritances of his wife and also his children. The woman's right to appeal to a court of law for her rights is also established. Again, these laws were greatly concerned with the economic protection and security of women.

Conclusion

Each section addressed in this paper could be discussed at much greater length, but the purpose of this study is to provide an overall perspective, and to offer the opinion that the study of women in ancient times warrants additional examination. When viewed as a whole, Hebrew and ancient Near Eastern laws provide compelling evidence that women had a more central role in ancient society, were held in higher esteem, and were granted more rights than is commonly recognized in scholarly tradition.

To comprehend the position of women in ancient times fully and accurately, researchers need to strip away modern perceptions and biases and view ancient history on its own terms. For instance, the chastity and fidelity of men and women is not valued by most modern societies. Thus, the harsh penalties in the laws

⁷⁵ *Ibid.*, 68.

⁷⁶ *Ibid.*, 69.

concerning fornication and adultery are condemned by many as oppressive, particularly for women. But these codes must be understood from within the ideals of that culture, not our own.

I concur with Carol Meyers:

Patriarchy is related to ideas of male dominance, but what does male dominance mean? [It] cannot be equated with female passivity or lack of autonomy. . . . At best it is a risky business to apply these distinct spheres and attendant value known from modern experience to societies that are smaller and less complex than our own. At worst, doing so means failing to grasp the important position of women in such societies. . . . Gender differences that appear hierarchical may not have functioned or been perceived as hierarchical within Israelite society.⁷⁷

As discussed earlier in this paper, Levine calls for a new approach to ancient history that acknowledges and understands the place of women. Evidences of a higher status for women that are found within the laws must not be ignored in this endeavor. The law codes, chiefly Hebrew law, can be considered from a different perspective than exclusive male domination. They can instead be seen to signify the accountability of a husband and a father to his wife and children. When ancient society is viewed in this way, previous assumptions of women's universal oppression and subservience are seriously challenged.

⁷⁷ Carol Meyers, *Discovering Eve: Ancient Israelite Women in Context* (Oxford: Oxford University Press, 1988), 30, 32.