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**CLOSE KIN RELATIONSHIPS AND ECONOMICAL
DIMENSIONS IN THE STIPULATION OF THE LAW OF THE
LEVIRATE AS ARTICULATED IN DEUTERONOMY 25.5-10**

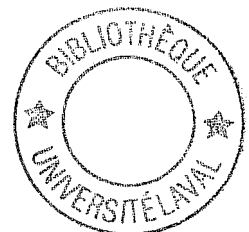
THÈSE

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Résumé

The goal of this thesis is to investigate the law of the levirate (Deuteronomy 25.5-10) and its economical dimensions, while not ignoring the sexual elements associated with it. Comparing the pertinent biblical texts with the laws and customs of neighboring people, this thesis purports to be an analysis of the problems confronted by widows who had no children. Through an exegesis of the biblical texts that deal with widows, and using different methodologies, such as biblical anthropology and form critical analysis, this investigation revealed that the well being of a widow who had no child took precedent over other legislations. While in Mesopotamia and in Egypt the protection of the weak was the prerogative of the king/pharaoh as a substitute to the sun god, no evidence, besides that of the Hittite Laws 193, seems to consider the levirate as a means of support for a widow with no children. However, a complex system was in place in order to ensure the economic well-being of a widow. We also discovered that in Ancient Israel, when a woman became a widow, her only hope of survival was to be taken care of by one of her male children. Ruth's story reveals that two childless widows, Naomi and Ruth, were restored when Ruth gave birth to a boy, Obed, since he is declared as belonging to Naomi. We further learned that the purpose of the law of the levirate was to avoid the loss of family property if a widow was to marry outside her husband's family or because of the refusal of her brother-in-law to perform his duty. We also noted that the support and the protection of the childless widow was an integral, and foundational, part of this law. Therefore, it seems evident that the goal of the law of the levirate was closely associated with the economic well-being of the widow. All the Old Testament references to widows seem to indicate that their goal was their protection against the arbitrariness of their masters or husbands. While the levirate seems to have been an exception rather than the norm, the economic well-being of a childless widow appears as the principal goal of this law. In a world where a woman's economic conditions was determined by her relationship with a male, whether her husband, her son, or, by default, her brother-in-law, the law of the levirate addresses this situation. Bordering on incest, this law appears as a reasonable response for the ancient Israelites in order to keep the family property within the family, as well as taking care of a childless widow.

Résumé

Cette thèse est une investigation la loi du lévirat (Deutéronome 25.5-10), ainsi que ses dimensions économiques, sans pour autant ignorer les éléments sexuels qui y sont associés. A travers l'exégèse des textes bibliques qui traitent du soin des veuves, et utilisant différentes méthodologies de recherche, cette investigation révéla que le bien-être d'une veuve sans enfant prenait précédent sur toute autre législation. Bien que le lévirat semble être une exception plutôt que la norme, le bien-être économique d'une veuve sans enfant apparaît comme étant le but principal de cette loi. Dans un monde où les conditions économiques d'une femme étaient déterminés par rapport à ses liens de parenté avec un homme, que ce soit son mari, son fils, ou, à défaut, son beau-frère, la loi du lévirat adresse cette situation. Proche de l'inceste, cette loi apparaît comme une réponse raisonnable pour les anciens Israélites afin de garder le patrimoine familial au sein de la même famille, et de pourvoir au besoin d'une veuve sans enfant.

Résumé

Le but de cette thèse est d'investiguer la loi du lévirat (Deutéronome 25.5-10), ainsi que ses dimensions économiques, sans pour autant ignorer les éléments sexuels qui y sont associés. Comparant les textes bibliques pertinents aux lois et coutumes des peuples avoisinants, cette thèse se veut une analyse des problèmes auxquels les veuves sans enfant devaient faire face. A travers l'exégèse des textes bibliques qui traitent du soin des veuves, et utilisant différentes méthodologies de recherche, dont l'anthropologie biblique et la critique de la forme, cette investigation révéla que le bien-être d'une veuve sans enfant avait préséance sur toute autre législation. Bien qu'en Mésopotamie et en Egypte la protection des faibles relevait du roi/pharaon en tant que substitut du dieu soleil, aucune évidence, à part celle des lois Hittites 193, ne semble envisager le lévirat comme moyen de soutien pour une veuve sans enfant. Néanmoins, tout un système était en place afin d'assurer le bien-être économique d'une veuve. Nous avons aussi découvert qu'en Ancien Israël, quand une femme devenait veuve, son seul espoir de survie était d'être prise en main par l'un de ses enfants mâles. L'histoire de Ruth révèle que les deux veuves sans enfant, Naomi et Ruth, furent restaurées lorsque Ruth donna naissance à un garçon, Obed, puisque celui-ci est déclaré comme appartenant à Naomi. Nous avons aussi appris que le but de la loi du lévirat était d'éviter la perte du patrimoine familiale si une veuve se remariait en dehors de la famille de son mari ou à cause du refus de son beau-frère de performer son devoir. Nous avons également constaté que le support et la protection de la veuve sans enfant faisait partie intégrale, et était même fondamental, à cette loi. Il semble donc évident que le but de la loi du lévirat était associé de façon étroite avec le bien-être économique de la veuve. Toutes les références de l'Ancien Testament concernant les veuves avaient pour but leur protection contre le côté arbitraire de leurs maîtres ou de leurs époux. Bien que le lévirat semble être une exception plutôt que la norme, le bien-être économique d'une veuve sans enfant apparaît comme étant le but principal de cette loi. Dans un monde où les conditions économiques d'une femme étaient déterminés par rapport à ses liens de parenté avec un homme, que ce soit son mari, son fils, ou, à défaut, son beau-frère, la loi du lévirat adresse cette situation. Proche de l'inceste, cette loi apparaît comme une réponse raisonnable pour les anciens Israélites afin de garder le patrimoine familial au sein de la même famille, et de pourvoir au besoin d'une veuve sans enfant.

TABLE OF CONTENT

TABLE OF CONTENT	i
FOREWORD	iv
LIST OF ABBREVIATIONS	vii
GENERAL INTRODUCTION	1
I. Statement of the Problem	1
II. Goal of the Thesis	4
III. Pertinence of the Thesis	5
IV. The Levirate and Close Kin Relationships	9
A. Definition of close kin relationships	9
B. Definition of incest	11
V. Methodology	15
A. Form Criticism	15
1. Introduction	15
2. Definition	17
3. Form Criticism and Other Old Testament Disciplines	18
3a. Literary Criticism	19
3b. Tradition-Historical Criticism	20
3c. Redaction Criticism	21
4. History	22
4a. Gunkel	22
4b. Form Criticism and Old Testament Studies	25
4c. Form Criticism and New Testament Studies	25
4d. Recent Studies	27
5. Goals	29
6. The Methodology	30
6a. Procedure	30
6b. Definition of Terms	32
7. Conclusion	35
B. Biblical Anthropology	36
1. Introduction	36
2. History	38
3. Methodology	44
4. Conclusion	52
VI. Concluding Remarks	53
CHAPTER 1: CARE OF WIDOWS IN THE ANCIENT NEAR EAST	57
I. Introduction	57
A. Ancient Near Eastern kings and codes of laws ..	60
B. Law codes and protection of the oppressed	66
II. The Code of Hammurabi	68
A. CH §150	70
B. CH §171	72
C. CH §172	73
III. The Hittite Laws	79
A. HL §193	79
B. HL §192	79
IV. The Middle Assyrian Laws	83

A. MAL §25	83
B. MAL §26	85
C. MAL §30	85
D. MAL §33	88
E. MAL §34	89
F. MAL §43	90
G. MAL §46	93
V. Egyptian Texts	98
A. The instruction of the vizier Ptah-Hotep	102
B. Instruction for King Meri-Ka-Re	104
C. Instruction of King Amen-Em-Het	105
D. Instruction of Amen-Em-Opet	106
VI. Others	107
A. Tale of Aqhat	107
VII. Adoption and Surrogacy	109
VIII. Evaluation	111
CHAPTER 2: CARE OF WIDOWS IN THE OLD TESTAMENT	114
I. Social Structure of Ancient Israel	115
A. Kinship Ties	115
B. Definition of Widowhood	122
II. Genesis 38.6-26: Judah and Tamar	134
III. Widows Among the Weak	142
A. Law Structure in Ancient Israel	143
B. Exodus 22.21-23	149
C. Leviticus 22.13	151
D. Numbers 30.9-12	153
E. Deuteronomy 10.18	155
F. Deuteronomy 14.22-27, 14.28-29 and 26.12-13	157
G. Deuteronomy 16.11	161
H. Deuteronomy 24.17-22	165
I. Deuteronomy 27.19	173
IV. Ruth	176
A. Reconstructing the Story	177
B. Dating the Story	181
C. Naomi's Property	182
D. Land Redemption	186
E. Go'el and Levirate	198
F. Comparison Between Ruth and Deuteronomy	209
G. Inferences from the Book of Ruth	213
V. Prescriptions from the Psalms and Wisdom Literature .	215
A. Psalm 82	215
VI. Prophetic Voices	222
A. Amos	225
B. Hosea	228
C. Micah	229
D. Isaiah	231
E. Jeremiah	233
F. Ezekiel	235
G. Zechariah	237
H. Malachi	238
VII. Evaluation	239
CHAPTER 3: DEUTERONOMY 25.5-10	243
I. Introduction	243
II. Deuteronomy: The Book	245

III. Patrimony and Inheritance	257
IV. Coveting of Property	262
V. Paternal and Communal Authority	265
VI. Who is a Brother?	273
VII. Marriage and Family	278
VIII. Solidarity	282
IX. What's in a Name?	285
X. Removal of the Sandal and Spitting in the Face	288
XI. The Levirate	294
XII. Evaluation	303
CONCLUSION	305
BIBLIOGRAPHY	314
A. Atlases, Bible Translations, Dictionaries, Lexicons and Concordances	314
B. The Ancient near East and Mediterranean: Texts and Culture	315
C. Anthropology, Ethics, and Sociology	318
D. Religion, Ethics, and Social Structure of Ancient Israel	323
E. Old Testament Introductions, Theologies, Journals and Commentaries	335
F. New Testament Related Works	348
G. Miscellaneous	348

FOREWORD

All around us we see and hear of people in need, people who are suffering and trying desperately to survive and overcome obstacles life is sending their way. Among them is a certain category of people who, from time immemorial, have been abused, rejected, mistreated and taken advantage of. These people, often, do not have a voice in the society in which they barely survive. We are talking here of widows. Not just any widow, although most would certainly identify in some ways with the subject under investigation. Widows, who have no children, and therefore no means to care for themselves in their old age, are a special category of women. Not only have they lost their husband and, therefore, their means of sustenance, but they also have no anticipated means of considering the future.

Yet, although misery seems to be their lot in life, this category of widows sees itself at the center of a particular biblical law, which, if applied properly, could bring forth both societal acceptance and economical anticipated renewal. This is the subject of our investigation. Although focused on a very specific law, our research took us on a tortuous road, which allowed us to discover various dynamics and economical systems involved in the care of widows who have no child(ren). Such an investigation, though, can come to term only if directed throughout by people who see in it a contribution both to the academic world and the world in which we live. I would like, therefore, to take this opportunity to thank the following people, recognizing, however, that should there be any failure, this author alone is

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LIST OF ABBREVIATIONS

General

BCE	Before Common Era
CE	Common Era

Bible

Gen.	Genesis
Ex.	Exodus
Lev.	Leviticus
Num.	Numbers
Deut.	Deuteronomy
Jos.	Joshua
Jgs.	Judges
1 Sam.	1 Samuel
2 Sam.	2 Samuel
1 Kgs.	1 Kings
2 Kgs.	2 Kings
1 Ch.	1 Chronicles
2 Ch.	2 Chronicles
Ps.	Psalms
Prov.	Proverbs
Is.	Isaiah
Jer.	Jeremiah
Lam.	Lamentations
Ezek.	Ezekiel
Hos.	Hosea
Zech.	Zechariah
Hab.	Habakuk
Mic.	Micah
Mal.	Malachi
Matt.	Matthew

Bible Versions

JB	Jerusalem Bible
JPSV	Jewish Publication Society Version
KJV	King James Version
NAB	New American Bible
NASB	New American Standard Bible
NEB	New English Bible
NIV	New International Version
NRSV	New Revised Standard Version
RSV	Revised Standard Version

Ancient Law Codes

CH	Code of Hammurabi
HL	Hittite Laws
MAL	Middle Assyrian Laws

Rabbinic Literature

Sanh.	Sanhedrin
Yeb.	Yebamot
bBer.	Babylonian Talmud, Berakoth
bNid.	Babylonian Talmud, Niddah
bSanh.	Babylonian Talmud, Sanhedrin
bYeb.	Babylonian Talmud, Yebamot
jKet.	Palestinian Talmud, Kethubah
jYeb.	Palestinian Talmud, Yebamot
jNedar.	Palestinian Talmud, Nedarim

Books and Journals

ANET	<i>Ancient Near Eastern Texts Relating to the Old Testament.</i> James B. Pritchard, ed. 3rd ed. Princeton, NJ: Princeton University Press, 1969.
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GENERAL INTRODUCTION

I. Statement of the Problem

Ancient Israel did not live in a vacuum. This becomes immediately evident to anyone looking through the pages of the Bible for numerous mentions are made of other people, customs and religions. Furthermore, Israel's history is one of interaction with these people, customs and religions.

Determining the influence of the other Ancient Near Eastern nations upon Ancient Israel is a rather complex study that is best realized when the issue is limited to a single subject. One such subject is that of the inter-relationship between a man and his brother's wife. The Bible, as well as various Ancient Near Eastern law codes, has certain laws governing such relationships. It is of interest that generally the rules which regulate these situations in Scripture are either similar to, or only at variance with, other codes in the small details.

There is clear evidence that the levitical law against incest does not exclude the Israelite levirate¹ law, as so many commentators suppose. We find the practice of the levirate alongside the prohibition against incest in other cultures and there is no reason to presume that these laws could not have existed side by side in Israel as well.

¹Custom by which the widow of a man who died childless was taken by the brother of the deceased in order to have [a] child[ren] to be raised as that of the first husband. More will be said about this in the course of the paper.

Various extant cuneiform laws provide the possibility of closer parallels to Israelite law because of the cultural similarities between Mesopotamian/Hittite and Israelite societies.² Given that these law codes could have only a fraction of their entire discussion committed to writing, so that each code contains no more than a few aspects of a given scholarly problem, we have laws that sometimes overlap with the aspects preserved in other codes, and sometimes not. Moreover, a given system may pursue the discussion in a particular direction, considering variants not discussed elsewhere. By combining the similar and not-so-similar provisions of the various codes, the whole problem, and thus the underlying law, may be revealed and any peculiarities in the individual systems disclosed.³ Accordingly, the preserved material of the codes shows that practice of so-called levirate marriage (Latin *levir* = "husband's brother") was not peculiar to Israel, but was known throughout the ancient Near East and indeed in Asia-Africa and South America.⁴

However, the problem is not as simple as it first appears, since he law against incest qualifies the levirate law to some extent.⁵ In fact, it is rendered more difficult when we consider the diversity and

² However, two significant conditions show differences that exist between them which suggest caution when comparing them. One is the strong religious component of Israelite law, a component which is more politicized in cuneiform law. The other is the relative size and population densities in the respective cultures.

³ Raymond Westbrook. "Adultery in Ancient Near Eastern Law" *Revue Biblique* 97 (1990): 548.

⁴ Ian Cairns. *Word and Presence - A Commentary on the Book of Deuteronomy* (Grand Rapids, MI: Wm. B. Eerdmans Pub. Co., 1992): 216. See also Robert Gordis. "Love, Marriage, and Business in the Book of Ruth: A Chapter in Hebrew Customary Law" in *A Light unto My Path. Old Testament Studies in Honor of Jacob M. Myers*. Howard N. Bream, Ralph D. Heim and Carey A. Moore, eds. (Philadelphia, PA: Temple University Press, 1974): 247-248.

⁵ Thomas and Dorothy Thompson. "Some Legal Problems in the Book of Ruth." *Vetus Testamentum* 18, 1 (Jan. 1968): 95-96.

extent of the biblical data. We find in some instances, for example, that certain people had sexual relations with close kin and yet were never condemned under the Law either socially or religiously for doing so. Notable among them are Abram, who married his half-sister Sarai;⁶ Jacob, who married two sisters, Rachel and Leah;⁷ Judah and his daughter-in-law Tamar⁸ and Boaz.⁹ On the other hand, we also find that sexual relations between close kin were not only frowned upon under the Law, but that such actions carried with them a societal stigma as well as certain very grave consequences. Instances of such relations can be seen between Lot and his daughters;¹⁰ Reuben with his father's concubine, Bilhah;¹¹ Amnon and his half-sister, Tamar;¹² Absalom and his father's concubines¹³ and Herod and his sister-in-law, Herodias.¹⁴

What is, therefore, the role which the Code of Law as a whole played with regard to family law in general, and close kin relationships in particular? Was it given so as to regulate social behavior, or to sanction what was already common custom? Are the laws, as presented and preserved, concerned only with the particulars mentioned therein, or are they classificatory? Certainly these questions, and others which may arise throughout our investigation, need to take into consideration the various contexts of the different events, as well as the evolutive aspect of the Law and its application. Furthermore, the seeming

⁶Gen. 20.12.

⁷Gen. 29.16-30.

⁸Gen. 38.

⁹Ruth 4.13.

¹⁰Gen. 19.30-38.

¹¹Gen. 35.22; 49.3-4.

¹²2 Sam. 13.

¹³2 Sam. 16.20-23.

¹⁴Matt. 14.3-4.

contradictions between Deut. 25.5-10 (which orders the dead husband's brother to take his widow) and Lev. 18.16 (which forbids a brother to go to his brother's wife) and Lev. 20.21 (which is the penalty for breaking the rule of Lev. 18.16) constrain us to respond to the questions regarding the cohesiveness of the demands of family law in the Old Testament.

II. Goal of the Thesis

The levirate has usually been associated with sexual issues. While Jewish commentators resolved this question with a certain degree of satisfaction during the Middle Ages (see comments in thesis), such was not the case among Christian theologians. They have always been very uncomfortable with the levirate issue and the law of Deut. 25.5-10, especially because of its strong link to the laws of incest found in Lev. 18 and 20. Christians today are still offended by such a possibility. Yet, by negating the possibility of the levirate, or by neglecting it, they have confined the levirate to a sexual issue rather than an economical one, as ought to be the case. This is important, for according to Otto Michel, the word "economy," etymologically, comes from the Greek words *οικος* and *οικια*.

The first means "house" or "dwelling" and "is common in Greek from the time of Homer and is in current use."¹⁵ Michel goes on to demonstrate through a very extensive use of ancient manuscripts that

¹⁵ Otto Michel. "οικος ,οικια" in the *Theological Dictionary of the New Testament*. Vol. 5. Geoffrey W. Bromiley, transl. and ed. (Grand Rapids, MI: Wm. B. Eerdmans Pub. Co., 1967.

this is the meaning of the word. He adds that οἶκος "can also mean 'domestic affairs,' 'wealth,' 'possession'¹⁶ . . . also the 'family' or 'family property'."¹⁷ In primitive Christianity, too, the term οἶκος was used to denote a "house" or a "family"¹⁸ where the house and family were the smallest natural groups in the total structure of the congregation.¹⁹

The ancient Greeks attributed a slightly different meaning to οἶκος. While οἶκος had a broad range of signification, "being the whole of a deceased person's possessions, what he leaves behind,"²⁰ οἶκος "was simply his residence." In the New Testament it was used literally for "house,"²¹ and then figuratively for "family" or "household."²² However, on some occasions οἶκος could also mean "possession."²³

Derived from these two words is the word οἰκονομία which, from the time of Xenophon²⁴ and Plato,²⁵ "relates primarily to household administration, and applies generally to 'direction,' 'administration,' 'provision'."²⁶ In the New Testament the term οἰκονομία carries the

¹⁶ Michel, 120; see London Papyrus 1309, 3.

¹⁷ Michel, 120; see Ryland Papyrus 76, 10.

¹⁸ Michel, 130; see 1 Cor. 1.16; Philem. 2, Acts 11.14, Acts 16.15, 1 Tim. 3.4, 5, 12, etc.

¹⁹ Michel, 130.

²⁰ Michel, 131; see Xenophon's Oeconomicus 1, 5, and Herodotus 7, 224.

²¹ See Matt. 5.15; 7.24ff; 10.12a; etc.

²² Michel, 131; see Matt. 10.12b; 12.25; Mk. 6.4.

²³ See Mk. 12.40 and parallels.

²⁴ Xenophon's Oeconomicus 1.1.

²⁵ Plato's Apologia 36b; Republica 6, 498a; 3, 407b. See also Tebtunis Papyrus I, 27, 21 and Elephantine Papyrus 11.7.

²⁶ Michel, 151.

meaning of household administration,²⁷ as well as that of "plan of salvation, administration of salvation, order of salvation."²⁸

This study will try to correct the misconceptions associated with the levirate law. We will argue that the purpose of the levirate was to address economic issues related to widows who had no children, rather than simply sanctioning close kin relationships under certain conditions. While there can certainly addends some sexual ethical dimensions, it will be argued that the primary purpose of the law of Deut. 25.5-10 was to ensure the care of widows who had no children to take care of them in their old age. It will further be argued that the law of the levirate was given in order to ascertain that the goods associated with marriage and inheritance would be preserved within a certain family unit, and that relations between family units would not be disturbed by the widow or by the goods belonging to her former husband being distributed outside the initial family unit.

III. Pertinence of the Thesis

One of the most sensitive issues in both ancient and modern times is that of the care of widows. This is evidenced by the many ancient pieces of legislations which sought to equate the relative worth of a king's reign with the care which was extended to those who were poor during the time he was in power, among whom the widows figured

²⁷ See Lk. 16.2ff.; 1 Cor. 9.17; etc.

²⁸ Michel, 152; see Eph. 1.10; 3.9; 1 Tim. 1.4.

prominently.²⁹ This feature will be addressed in detail in the next chapter.

While in modern Western and North American societies the welfare of the "poor" is somewhat undertaken by the state, there remains a biblical mandate which ought to be fulfilled, the parameters of which are partly determined in the law of the levirate. In our modern context, the distribution of money, or other tangible goods, is often carried out within a certain social structure: well-being comes by virtue of one's place in the structure which determines whether or not there is money for goods, and how much. Jacques Ellul, in his now classic treatment of the subject, affirmed that "money is closely linked to all economic phenomena" and that it "is nothing but the symbol of the total economy."³⁰ He argues that money, as the measure of the value, distribution or capitalization of wealth, has a definite economic function. However, in a larger sense, money has no value in itself beyond what the economy, according to its own prosperity, gives it. It is thus abstract and impersonal.³¹ Ellul then asks the following question: "If money is an economic reality tightly linked to the social

²⁹ See, for example, the prologue to the Laws of Hammurabi, where we read: ". . . Hammurabi, the pious prince, . . . to make justice prevail in the land, to abolish the wicked and the evil, to prevent the strong from oppressing the weak, . . ., who sustains his people in crisis . . . When the god Marduk commanded me to provide just ways for the people of the land (in order to attain) appropriate behavior, I established truth and justice as the declaration of the land, I enhanced the well-being of the people," and the epilogue: ". . . I enhanced the well-being of the land, I made the people of all settlements lie in safe pastures, I did not tolerate anyone intimidating them. . . . In order that the mighty not wrong the weak, to provide just ways for the waif and the widow, I have inscribed my precious pronouncements upon my stele and set it up before the statue of me, the king of justice . . ." Taken from Martha T. Roth. *Law Collections from Mesopotamia and Asia Minor*. 2nd ed. (Atlanta, GA: Scholar Press, 1995, 1997), 76-140.

³⁰ Jacques Ellul. *Money and Power*. Downers Grove, IL: InterVarsity Press, 1954-1979, 1984), 10.

³¹ Ellul, 10.

complex, what can we as individuals do when we see injustice, imbalance, disorder?"³² He further states: "If we accept the abstraction and impersonality of money, ultimately there is only one question left to ask. How will this money be distributed?"³³

This question, and related ones, while not articulated in the same fashion, seems to find antecedents in the biblical text. How were the poor taken care of in biblical times? What means, if any, did they have to ensure that their basic needs were met? How could a widow, with no child, and therefore no apparent means of support, gain access to goods left by her husband? In what ways were these goods, both real and movable, distributed in the economic structure(s) in which she lived? Finding answers to these questions will help us gain a new perspective on some of the social ills which are present in our own context. Yes, most widows, in our North American context, do have access to social security, albeit it is somewhat inadequate. They might also benefit from private investments they, or their late husbands, may have made. With the plethora of senior citizen complexes and retirement homes, most widows, whether they have children or not, can "survive." However, while not ignoring the fact that some present-day widows obviously struggle to survive, there exists a category of women, the divorced, who seem to correspond more closely to the societal/economic situation described and preserved for us in the Bible.

³²Ellul, 11.

³³Ellul, 11.

Thus the question: who is a true widow today? Are single, divorced moms the new widows in our society? Most do not have any other means of support than welfare or hard, underpaid work. Most have lost status and security. Abandoned and rejected, these women struggle to keep themselves, and their children, alive, oftentimes with means way below the poverty line. Frequently there is no inheritance to pass on to the children, and most often there is a "loss of name," with all that that entails. In these plights we see the societal/social (read economic) dimensions which this thesis will try to address. Could not the way our society deals with single parents, mostly divorced mothers, be the means by which we can evaluate whether a government is a good government? This is where the investigation of the care of widows in the Old Testament seems very pertinent to today, although we may not have linked the two categories of women in the first place.

IV. The Levirate and Close Kin Relationships

A. Definition of close kin relationships:

Among the many problems which affect society, and more particularly the family, that of incest is one of the least understood. Appalling in and of itself the term "incest" is often understood as the occurrence of sexual intercourse between members of an immediate family. However, it can also refer to several other offenses: to sexual relations with a consanguineous female relative; to adultery with the

wives of fellow group members; and to sexual relations with affinal kin.³⁴

Studies from anthropology and sociology have determined that religious sanctions operating in early tribal societies were put in place in order to prohibit close familial marriages.³⁵ William Williams, for his part, comments that behind the unclean taboos in Lev. 18 ". . . is the intention to safeguard the solidarity of the family from internal tensions sexually generated."³⁶

This taboo against incest occurs in many areas of the world, being found in tribes all over the earth. In cultures of the Ancient Near East, there was generally a strong prejudice against it with the exceptions of the Egyptians and the Hittites. In the Egyptian royal family, brothers married sisters and the nobility often followed suit. This practice in the royal family was apparently motivated by the desire to preserve the purity of the royal blood, which was considered divine. In the wealthiest classes, however, the motive was certainly more mercenary for as Cole says, "brothers married sisters because the family inheritance passed from mother to daughter and the desire was strong to keep that wealth in the family."³⁷

³⁴ Stephen F. Bigger. "The Family Laws of Leviticus 18 in Their Setting." *Journal of Biblical Literature* 98, 2 (June 1979), 193.

³⁵ Virginia Stearns. "The Justification for the Prohibition in Leviticus 18." Unpublished Paper presented to Dr. M. Dempster (Southern California College/Vanguard University, 1985), 2.

³⁶ William C. Williams. *An Examination of the Relationship Between Solidarity and Adultery in Ancient Israel*. Ph.D. Dissertation (New York University: Ann Arbor, 1975), 195.

³⁷ William Graham Cole. *Sex and Love in the Bible* (New York, NY: Association Press, 1959), 169.

Jack Goody, in his very important study,³⁸ proposed that patrilineal groups classified their intra-family sexual offenses into the following three categories, in order of gravity:

1. Intercourse with the wife of a patriclan member (the group-wife prohibitions, or group-spouse adultery).
2. Intercourse with a member of the same patriclan (the intra-group sexual prohibition; incest or incestuous adultery).
3. Intercourse with the wife of a non-clansman (the extra-group prohibition, or non-group adultery).

Goody felt that matrilineal societies followed a different pattern, laying greater emphasis on the intra-group sexual prohibition. However, since in Ancient Hebrew society the descent passed from the father to the eldest son, the kinship bonds surrounding agnatic relatives³⁹ were strong, and thus some support for Goody's theory may be considered.

B. Definition of incest:

The reasons and origins behind incest regulations are complex. The possibility that people inherently sensed that inbreeding might cause genetic problems became plausible after the work of Charles Darwin, although the genetic evidence is not unambiguous.⁴⁰ In the view of

³⁸ Jack Goody. *Comparative Studies in Kinship* (London, England: Routledge & Kegan Paul, 1969) and "Incest and Adultery" in *Kinship*. J. Goody, ed. (London, England: Penguin Books, 1971), 64-81.

³⁹ Agnatic relatives are descendants of the same male ancestor.

⁴⁰ See E. Westermarck. *The History of Human Marriage* (London, England: MacMillan, 1894), 335-353; see also R. Fox. *Kinship and Marriage* (London, England: Penguin Books, 1967), 58-59.

Sigmund Freud, the horror of incest developed out of a powerful sexual desire for female family members, notably for one's mother.⁴¹ W. Robertson Smith, for his part, had suggested earlier that couples brought up together would find their sexual appetite dulled.⁴² Crawley in his study of the problem of incest, stated that "many societies exhibit signs of a deep fear of mystical danger, brought about by personal 'impurity', illicit behavior or breaking taboos; and incest restrictions may be connected with this attitude."⁴³ Others have also suggested sociological functions, raising the following questions: was incest thought to prevent exogamy⁴⁴ which would endanger the continuity of the family?⁴⁵ Or were incest regulations designed to maintain order and authority within the family by laying down strict rules for sexual conduct?⁴⁶ In neither the OT nor the NT does incest seem to be condemned for eugenic reasons, although, as Davies points out, "these may have been the basis for the moral prohibition."⁴⁷ As can be seen, the motives which may have been behind the Hebrew incest prohibitions were not simple.

Incest, when it occurred, certainly broke social conventions and often prevented domestic harmony, in addition to bringing pollution or

⁴¹ S. Freud. *Totem and Tabu* (Vienna, Austria: Hugo Heller, 1913).

⁴² W. Robertson Smith. *Kinship and Marriage in Early Arabia* (Cambridge, England: Cambridge University press, 1885).

⁴³ A.E. Crawley. *The Mystic Rose: A Study in Primitive Marriage* (London, England: MacMillan, 1902), 183.

⁴⁴ Custom according to which marriages take place between members of different clans.

⁴⁵ C. Levi-Strauss. *The Elementary Structure of Kinship* (London, England: Eyre & Spottiswoode, 1969), 12-25.

⁴⁶ B. Malinowski. *Sex and Repression in Savage Society* (London, England: Routledge & Kegan Paul, 1927). See also his *Kindred and Affinity as Impediments to Marriage* (London, England: SPCK, 1940).

⁴⁷ J.J. Davis. "Incest (In The Bible)." *New Catholic Encyclopedia*. Vol. 7. (Washington, DC: The Catholic University of America, 1967), 420.

defilement into the community. It is interesting to note that this concept of pollution developed gradually and adapted itself to different situations. Also, it was not peculiar to the Hebrews, for as Cole wrote, "it is well-nigh universal in human society, not so much because of genetic considerations, but because of its destructive effect on families. To hold the family together in unity and without suspicion of jealousy, the taboo of incest is made a fearful and dreadful barrier."⁴⁸ In fact, any event, attitude or action that threatened the established social order was viewed with suspicion since social stability was essential in that type of society. It appears, therefore, that "their fears of anything threatening life or order merged to form a wide-ranging mystical -- yet very real -- danger which we, for convenience, call 'pollution'."⁴⁹

We find that pollution restrictions covered a wide area of social life, controlling the food people ate, their sexual behavior⁵⁰ and contact with sexual fluids,⁵¹ their defecation⁵² and their contact with birth,⁵³ disease⁵⁴ and death.⁵⁵ Pollution was contagious and brought people into real danger in both a ritual and a mystical sense, resulting, perhaps, in misfortune, sickness or even death; so much so that "knowledge of this might be expected to cause most people to avoid any polluting influence, but if restrictions were broken and no

⁴⁸ Cole, 398.

⁴⁹ Bigger, 195.

⁵⁰ Lev. 18 and 20.

⁵¹ Lev. 15.16,18; Deut. 23.10-11.

⁵² Deut. 23.12-14.

⁵³ Lev. 12.2-8; 15.19; 18.19.

⁵⁴ Lev. 21.17-21.

⁵⁵ Lev. 21.10-11.

misfortune resulted, judicial penalties -- such as those given in Leviticus 20 -- could be applied to reinforce purity beliefs."⁵⁶ Mary Douglas, in her well documented analysis of the subject, comments that people's fear of pollution may have prevented behavior which was difficult to control because it was essentially private, and in some cases illness and misfortune may have been blamed on unwitting pollution, thus reinforcing the fear.⁵⁷ Bigger, in fact, affirms that pollution restrictions were not directly concerned with moral questions and that most of them have no bearing on morality, but that "in some cases (such as in sexual matters) morality was in practice encouraged by fear of pollution."⁵⁸

It is evident that the solidarity of the family as a unit was to be preserved, and that close association was expected from its members. Pollution of an incestual nature had a negative effect on the family unit and thus on the community so much so that its avoidance had become a primary concern of Hebrew holiness legislation. However, given secrecy and consenting partners, many cases of incest could go undetected. This was really adultery and therefore punishable by death. More will be said later concerning this.

⁵⁶ Bigger, 195.

⁵⁷ Mary Douglas. *Purity and Danger: An Analysis of Concepts of Pollution and Taboo* (London, England: Routledge & Kegan Paul, 1966), 133.

⁵⁸ Bigger, 195.

V. Methodology

This study will draw from, but will not be limited to, two distinct yet very essential methodologies: form criticism and biblical anthropology. Each needs to be defined in order to demonstrate their pertinence to this study.

A. Form Criticism:

1. Introduction

In addition to all else that it may be, the Old Testament is a literary work. As such, literary methods must be used in order to understand it and "since most of the Old Testament has a long oral or preliminary tradition, a full understanding of its literature requires an understanding of that oral tradition."⁵⁹ The method used to analyze and interpret the literature of the Old Testament, through a study of its literary types or genres, is known as form criticism. Simply stated it is a means of identifying the genres of that literature, their structures, intentions and settings in order to understand the oral stage of their development.⁶⁰

The structures and formulas of our genres of speech and literature shape our own language. Recognizing this we are able to understand how such conventional genres exerted a powerful influence in ancient cultures, including that of Ancient Israel. According to Tucker "folk literature, which ordinarily arises and is transmitted orally, is even

⁵⁹ Gene M. Tucker. *Form Criticism of the Old Testament* (Philadelphia, PA: Fortress Press, 1971): 1.

⁶⁰ Tucker, 1.

more subject to traditional conventions than is modern literature."⁶¹ Moreover, in folk literature there is little concern for authorship and individuality since the literature is considered to be the common property of the community and, therefore, to be subject to the traditional literary patterns of that community.⁶² Thus, although some very creative individuals originated and contributed to particular stories, it is usually impossible to identify the "authors" of folk literature.⁶³

The Old Testament, representing the literature of a people, contains a rich collection of literary and oral genres of all kinds. This richness and diversity is due to several factors. First, because the development of the Old Testament spanned several centuries it preserves genres which arose from different social and political structures, thus explaining the influences from Canaanite, Egyptian, and Mesopotamian sources.⁶⁴ Second, the Old Testament preserves the traditions of the whole people of Israel, not just that of a few creative writers. Third, the influence of the particular religious

⁶¹Tucker, 3.

⁶²Tucker, 4.

⁶³Tucker, 4, writes: "To the "purist," the only true folk song is one which cannot be traced back to a particular composer."

⁶⁴Douglas Stuart. *Old Testament Exegesis - A Primer for Students and Pastors* (Philadelphia, PA: The Westminster Press, 1980): 111, writes:

"It is more widely understood now that ancient writers (including the prophets, in whose books form criticism is especially employed) borrowed forms from the ancient world in a tentative manner and reworked them. Their own inspired creativity was everywhere evident, and they were hardly slaves to a set of rules to which the forms (and parts of forms) they used could always be conformed. Ancient biblical writers and speakers thus took what they wanted from the existing forms (the typical) and produced new combinations or constructions (the unique)."

beliefs and practices of Ancient Israel upon the nature of this collection of literature cannot be ignored.⁶⁵

2. Definition

For Brueggemann, "form criticism works on the assumption that every community, including Israel, at worship, devises typical patterns of speech and expressions to articulate needs, hopes and experiences."⁶⁶ It may be loosely defined as "the analysis of the typical forms by which human existence is expressed linguistically; traditionally this referred particularly to their oral, pre-literary state, such as legends, hymns, curses, laments, etc."⁶⁷ The term itself is a translation of the German word *Formgeschichte* which literally means the "history of form." Martin Dibelius first used this expression in 1919.⁶⁸ The use of the underlying application as regards Biblical studies goes back to the Old Testament scholar Hermann Gunkel (1862-1932), who preferred the term *Gattungsgeschichte*, that is, a history of [literary] types or "genres."⁶⁹

There is, however, somewhat of a distinction between *Formgeschichte* and *Gattungsgeschichte*. According to Stuart, the concern of form criticism is the isolation and analysis of specific literary

⁶⁵Tucker, 22.

⁶⁶Walter Brueggemann, as quoted by William C. Williams during the course "Current Issues in the Old Testament." Southern California College/Vanguard University (Costa Mesa, CA, Fall 1986).

⁶⁷Richard N. Soulen. *Handbook of Biblical Criticism*. 2nd ed. (Atlanta, GA: John Knox Press, 1976, 1981): 71.

⁶⁸Martin Dibelius. *From Tradition to Gospel*. (London, England: Ivor Nicholson and Watson, Ltd., 1934).

⁶⁹See Hermann Gunkel. "Fundamental Problems of Hebrew Literary History" in *What Remains of the Old Testament* (London, England: George Allen & Unwin, 1928).

types contained in a passage. "From such an analysis," he writes, "the exegete can often discern something about the way the passage has been composed, its themes, its central interests, or even the type of situation in which it may have been employed (depending on the form) in Ancient Israel."⁷⁰ Thus, though not uninterested in the larger literary blocks of material or even books, form criticism focuses more on the individual literary sub-units or pericopes.⁷¹ On the other hand, the criticism or analysis of genres (literary types) is usually limited to larger literary units and styles such as law, history or wisdom. It is that aspect of criticism which examines the form, content and function of a particular unit and asks whether these are definite enough and typical enough that the unit can be considered a literary genre in its own right. "If these factors are found to occur in a recognizably similar pattern, and if definite criteria can be established by which one can identify the pattern's occurrence, the unit may be said to belong to a given genre."⁷² However, individual scholars may often use "genre" interchangeably with "form," so that there is no distinction between form criticism and genre criticism, and thus no distinction between larger literary types (genres) and smaller, specific individual types (forms).⁷³

3. Form Criticism and Other Old Testament Disciplines

Form criticism is only one among the many disciplines which must be employed to arrive at an understanding of the literature--and the

⁷⁰Stuart: 110.

⁷¹John H. Hayes and Carl R. Holladay. *Biblical Exegesis - A Beginner's Handbook* (Atlanta, GA: John Knox Press, 1982): 77.

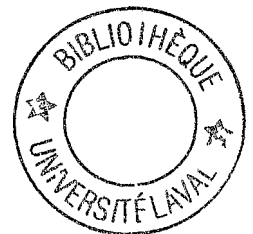
⁷²Hayes and Holladay, 77.

⁷³Stuart, 107.

life--of Ancient Israel. Because it is only one of the means of investigating the literature of the Old Testament, it must be used in concert with other methods, such as literary criticism, tradition criticism and redaction criticism. However, the lines between these various methodologies are often difficult to distinguish since form criticism has significantly influenced these other methods, giving rise to a tendency on the part of some to think of form criticism as a comprehensive approach in which the other disciplines are simply branches.⁷⁴

3a. Literary Criticism

While the primary concern of literary criticism is the literary stage of the material, that of form criticism is the recovery and interpretation of the pre-literary stage of that material. However, form criticism is also concerned with the literary stage itself, for works of literature, as well as oral traditions, follow genres with conventional structures, settings and intentions.⁷⁵ So, form criticism has contributed to the literary critical method by looking at the structure, genre and intention both of what the authors received and what they wrote. It has also shown that what literary critics considered in many cases to be evidence for multiple authorship was in fact evidence for multiple oral traditions used by a redactor.⁷⁶



⁷⁴Tucker, 17. This tendency is particularly seen in Klaus Koch's very valuable book, *The Growth of the Biblical Tradition*, S.M. Cupitt, transl. (New York, NY: Charles Scribner's Sons, 1969): 77.

⁷⁵Tucker, 18.

⁷⁶Tucker, 18.

3b. Tradition-Historical Criticism

Broadly understood, tradition criticism is an attempt to bring together the results of both source critical and form critical work and provide a complete history of Old Testament literature through its pre-literary as well as literary stages.⁷⁷ Narrowly understood, however, the term refers only to the history of the pre-literary development of a body of literature, or to the history of a specific theme or motif.⁷⁸ The expression has even been used to refer primarily to the history of the literary development of a body of material.⁷⁹

While historical criticism succeeds in pointing to the history of the documents and in allowing us to see their "linear life," form criticism succeeds in pointing to the sociological and liturgical dimensions underlying individual texts. It thus allows us to see their "vertical life." Certainly it can be said that "the biblical writings had both historical breadth and sociological depth."⁸⁰ Hayes and Holladay give the following example to illustrate this point:

when form-critical analysis is applied, for example, to a royal enthronement psalm, such as Psalm 2, it is as concerned with the "life setting" reflected within the psalm as it is with what is being stated within the psalm. The coronation of a king within ancient Israel is seen to have been the specific setting for which this psalm was originally formulated and in which it came to be repeated on successive occasions. Consequently, the interpreter

⁷⁷ Tucker, 19.

⁷⁸ See, for example, George W. Coats. *Rebellion in the Wilderness: The Murmuring Motif in the Wilderness Traditions of the Old Testament* (Nashville, TN: Abingdon Press, 1968).

⁷⁹ Tucker, 19.

⁸⁰ Hayes and Holladay, 79.

wonders less about the explicit identity of who is being referred to or who speaks in the psalm as the "king" and "the Lord's anointed." Indeed, as it turns out, what is said in the psalm, its content, is seen to be integrally related to the life setting which gave it birth, and the clue to understanding both is being able to recognize and appreciate its genre.⁸¹

Thus form, content and function are all interrelated and inform each other in the act of form-critical interpretation.

3c. Redaction Criticism

There has been much less confusion in the use of the term redaction criticism (*Redactiongeschichte*) as this line of inquiry is concerned with the literary stage of development, with the work and thought of the writers. According to Perrin, "it is interested in the theological motivation of an author as this is revealed in the collection, arrangement, editing, and modification of traditional material, and in the composition of new material or the creation of new forms within the traditions . . ." ⁸² Therefore, the term redactor refers to one who has revised oral or literary material. He is not an author since he did not create something new; yet he is more than a collector or editor, for as he revised the material he received, he gave it certain emphases and provided the texts with central themes through his work of composition.⁸³

⁸¹ Hayes and Halladay, 79-80.

⁸² Norman Perrin. *What is Redaction Criticism?* (Philadelphia, PA: Fortress Press, 1969): 1.

⁸³ Koch, 57-58.

It is evident that all of these methods must be employed to understand the full history of the Old Testament literature.

4. History

4a. Gunkel

Herman Gunkel (1862-1932) is the one who popularized the form critical method. He was influenced by the studies of folklore initiated by Jakob and Wilhelm Grimm, who had collected the folk traditions of the German people and classified them as fairy tales, myths, sagas and legends.⁸⁴ Gunkel, who was interested in Old Testament literature and above all, in its history, recognized at the beginning of his career that much of the Old Testament was folk literature, that is, it had originated orally. He further recognized that it contained literary types which had been influenced by those of other cultures.⁸⁵ He recognized the necessity of determining the date and authorship of a given book or document whenever possible. However, he argued that a history of Old Testament literature limited to the biographies of the writers was inadequate since, for the most part, the writers collected and used material which itself had a long pre-history of oral transmission and development.⁸⁶ Gunkel thus thought that one could write a more comprehensive history of Old Testament literature only by understanding the background and history of its literary types. Outlining in broad terms the main literary types of the Old Testament, he placed them under the general rubrics of prose or poetry, setting

⁸⁴ It is often popularly assumed that the Grimm brothers wrote the fairy tales which bear their names, but this was not the case. They simply collected and committed to writing stories which had circulated orally for generations.

⁸⁵ Tucker, 5.

⁸⁶ Tucker, 5.

each into its historical framework, and suggesting its place in the life of Ancient Israel.⁸⁷ The former category included myths, folk-tales, sagas, romances, legends and historical narrative; the latter, wisdom and prophetic oracles, secular lyrical poetry, hymns, thanksgivings, eschatological psalms, etc.⁸⁸

Gunkel also noted that types were often recognizable by their introductory formulas ("Sing unto the Lord," "How long, O Lord?" etc.) and that each type emerged from a specific setting in the life of a people. He further pointed out that, "because of this, a genre gives insight into a life-situation (*Sitz im Leben*) in which it arises and the setting in turn illumines the content and intention of the genre itself."⁸⁹

Gunkel, as opposed to Wellhausen,⁹⁰ argued that a literary analysis of the Old Testament must show the religion of the masses. He felt that by focusing on the religion of the masses, instead of the religion of the priests, one could gain a better understanding of the religious beliefs of a people or analyze the oral formulation of the religious experience and belief, rather than what was written down.

According to Gunkel, to understand a literary type "we must in each case have the whole situation clearly before us and ask ourselves,

⁸⁷ Tucker, 6.

⁸⁸ Soulen, 72.

⁸⁹ Soulen, 72.

⁹⁰ For Julius Wellhausen all eschatological material in the Bible was written late in its history. See his monumental *Prolegomena to the History of Ancient Israel*. Allan Menzies and J. Sutherland Black, transl. (New York, NY: Meridian Books, 1957).

Who is speaking? Who are the listeners? What is the *mise en scene* at the time? What effect is aimed at?"⁹¹ He further suggested that literary types evolve, arise, flourish and die or are transmuted, and can therefore be placed in a chronological relationship, as well as a formal relationship, with each other.⁹²

Gunkel applied the form-critical method to Genesis⁹³ and tried to identify as many freestanding units as he could (i.e., myths, legends, narratives, etc.). Reducing Genesis into small literary units which, according to him, existed in tales or songs and then were woven together to form the book of Genesis, he classified these into brief hero tales, extensive legends and story cycles. Rejecting the existence of myth in the Old Testament, he retained the idea of "faded myth," feeling that there was a kernel of historical truth in all historical material which had been embellished.⁹⁴ While he recognized some Babylonian motifs in the Bible, he refrained from reading too much into them, thus avoiding lots of problems which Friedrich Delitzsch fell into.⁹⁵

Gunkel's hope for a literary history of Israel faded as form criticism became absorbed into pure formalism. Tradition criticism arose in the 1930's in a renewed effort to analyze the history of the

⁹¹ Gunkel, "Fundamental Problems . . .," 62.

⁹² Gunkel, "Fundamental Problems . . .," 66, writes: "The spirit loses power. The types are exhausted. Imitations begin to abound. Redactions take the place of original creations. Hebrew ceases to be the living language of the people. By this time the collections [psalms, laws, legends, proverbs, etc.] are grouped together into larger collections. The Canon has come into being."

⁹³ Hermann Gunkel. *The Legends of Genesis* (New York, NY: Schocken Books, 1901, 1966).

⁹⁴ William C. Williams. Lectures in the course "Current Issues in the Old Testament." Southern California College/Vanguard University (Costa Mesa, CA, Fall 1986).

⁹⁵ Williams, Lectures in the course "Current Issues in the Old Testament."

transmission of traditions, along with their varied settings and transmutations.⁹⁶

4b. Form Criticism and Old Testament Studies

Among the many scholars who have contributed to the form critical analysis of the Bible, three stand out.

Hugo Gressmann demonstrated that eschatological theology was already developed by the Egyptians, and he argued that the concept of the Messiah was Egyptian in origin.

Martin Noth, for his part, believed that a tradition which anticipated the Exodus event could be seen in the book of Judges. For him the 12 tribes of Israel were the cornerstones for Israel's amphictiony.⁹⁷

Gerhard von Rad, in turn, identified Deut. 26.5-11 as a cultic credo. He assumed that one could reconstruct Israel's history from this confessional formula.⁹⁸

4c. Form Criticism and New Testament Studies

The literary forms of the New Testament, and the oral traditions behind them, presented the critics with a vastly different problem from those of the Old Testament. In many instances the Old Testament has hundreds of years of oral tradition behind it. The Synoptic Gospels,

⁹⁶ Soulen, 72.

⁹⁷ A confederation with one central place of worship.

⁹⁸ Williams, Lectures in the course "Current Issues in the Old Testament."

with which form criticism began, have only 30 to 60 years at most, while the letters of Paul have even less. Furthermore, the forms found in the Old Testament are numerous, while those of the New Testament are relatively few. For these reasons, and others, the two disciplines developed along lines independent of each other.⁹⁹

The application of form criticism to the New Testament began with the writings of Martin Dibelius¹⁰⁰ and Rudolf Bultmann.¹⁰¹ In England, Vincent Taylor¹⁰² became a cautious proponent of the method. Since these beginnings the method has been applied to a wide variety of New Testament material.¹⁰³

The purpose of form criticism, as applied to the New Testament, was, as for the Old Testament, to rediscover the origin and history of the individual units and thereby to shed some light on the history of the tradition before it took literary form. The aim was to determine whether the various units were traceable to Jesus, to the Early Church, or to the redactional (editorial) activity of the Gospel writers. Dibelius began with the assumption that the settings in the life of the Church which gave rise to and formed much of the synoptic material were the sermon (*kerygma*) and Christian teaching (*didache*).¹⁰⁴ For his part, Bultmann also attributed many of the forms to the Church and to

⁹⁹ Soulen, 73.

¹⁰⁰ Martin Dibelius. *From Tradition to Gospel* (London, England: Ivor Nicholson and Watson, Ltd., 1934).

¹⁰¹ Rudolf Bultmann. *History of the Synoptic Tradition* (New York, NY: Harper and Row, 1921, 1963).

¹⁰² Vincent Taylor. *The Formation of the Gospel Tradition* (London, England: MacMillan and Co., 1933).

¹⁰³ Soulen, 73.

¹⁰⁴ Dibelius, 16.

redactional activity, concluding that nothing could be attributed to Jesus with absolute certainty.¹⁰⁵

After its initial thrust, a major impediment to form criticism was the lack of terminological clarity. Unanimity existed in identifying certain forms, such as narratives, sayings, miracles stories, etc., but little agreement existed concerning the subdivision of these classifications or the terminology appropriate to them. Further, form criticism's approach to the Gospels ignored the thought and setting of the Gospel writers themselves. This oversight was corrected by redaction criticism, while structural linguistics challenged the basic assumption that written material could provide any access at all to the period of oral tradition. For his part, McKnight has pointed out that "form" and "structure" are not objective realities but are related to the observer, and that, in any case, form criticism cannot be executed in isolation; it involves judgments and knowledge across a spectrum of human existence, from laws of social organization to laments of personal grief.¹⁰⁶

4d. Recent Studies

At the turn of the twentieth century the task of form criticism was to go beyond literary criticism as it was then defined. The latter had recognized the composite character of both Old Testament and New Testament documents, and it had proposed dates and places of authorship for the documents and their underlying sources, but literary criticism

¹⁰⁵Bultman, 165.

¹⁰⁶Edgar V. McKnight. *What Is Form Criticism?* (Philadelphia, PA: Fortress Press, 1969): 42.

treated Scripture, particularly the Pentateuch and the Synoptic Gospels, as the literary product of individual personalities and not as the repository of the living traditions of common people. So, in an effort to correct literary criticism, there began an analysis of literary forms in order to rediscover the history of their development.¹⁰⁷

In more recent years, the methodological assumptions of form criticism have been challenged by rhetorical criticism and structural linguistics (structuralism), as well as by other methodologies. "Under re-examination is the relation of genre to setting, of oral to written traditions, of form to content, of the conventional or typical to the unique within a text, etc."¹⁰⁸ Those who utilize the methodology now suggest that the notions of genre, setting and function are far more complex than traditional form criticism allowed, and that "the typicality (or typicalities) which govern a text may include one or more factors other than pure morphology, such as setting, function, intention, structure, etc."¹⁰⁹

Notable among the many recent scholars¹¹⁰ who use the methodology is George Mendenhall who, on the basis of comparative analysis, demonstrated quite convincingly that the Decalogue is a covenant treaty

¹⁰⁷Soulen, 72.

¹⁰⁸Soulen, 72.

¹⁰⁹Soulen, 72.

¹¹⁰See Herb Wolf. "Implication of Form Criticism" in *Bibliotheca Sacra* 127 (1970): 37-49; Meredith G. Kline. *The Structure of Biblical Authority* (Grand Rapids, MI: Wm. B. Eerdmans Pub. Co., 1972); Peter C. Craigie. *The Book of Deuteronomy* (Grand Rapids, MI: Wm. B. Eerdmans Pub. Co., 1976): 24. See also Kenneth A. Kitchen. *Ancient Orient and the Old Testament*. Chicago, IL: InterVarsity Press, 1966 and R.K. Harrison. *Introduction to the Old Testament* (Grand Rapids, MI: Wm. B. Eerdmans Pub. Co., 1969).

of the Hittite type, dating no later than 1200 BCE.¹¹¹ Baltzer pursued the same reasoning with Joshua 24, concluding that it was both old and unified.¹¹²

5. Goals

The goals of form criticism, according to Tucker, are two-fold. First, it attempts to recover the full, living history of the Old Testament literature, especially with regard to its oral stage(s) of development. It then tries to place all the stages of development into their settings in the life of Israel. Second, form criticism is a tool of exegesis *per se* in that "it attempts to facilitate the full understanding and interpretation of what is essentially ancient religious literature that has a long and complicated history and prehistory."¹¹³

We can say then, that the proper goal of form criticism is to find the relationship of the text to life at the various stages of its history and that "all generalizing and cataloguing should serve that purpose."¹¹⁴

¹¹¹George E. Mendenhall. "Ancient Oriental and Biblical Law" in *Biblical Archaeologist* 17 (1954): 26-46.

¹¹²K. Baltzer. *The Covenant Formulary* (Oxford, England: Oxford University Press, 1970): 213.

¹¹³Tucker, 9.

¹¹⁴Tucker, 23.

6. The Methodology

6a. Procedure:

Gene M. Tucker has outlined the four more or less traditional steps involved in the application of the form critical method. These can be summarized as follows:

- Analysis of the structure: this first basic principle is based on the fact that most of the literature of the Old Testament has a long and often complicated oral pre-history. While all of the material eventually passed through the hands of writers, collectors or editors, much of it arose as folk literature with no identifiable author. This observation applies as much to narratives found in the Pentateuch as to sayings recorded in the Book of Proverbs. Even where the originator of the material can be identified (as in many of the prophetic books), he was often first a speaker and secondarily--if at all--a writer.¹¹⁵

Consequently, this first step consists of an analysis of the outline, pattern or schema of a given genre, paying particular attention to its opening and closing (*inclusio*), conventional patterns (parallelism, chiasm, etc.), etc. Since the occasional reference to an oral method of teaching can be seen in the Biblical text,¹¹⁶ as well as glimpsed in the writing down of sayings,¹¹⁷ form criticism helps, among other things, "to determine whether a particular book or unit arose orally or in writing, and to understand the situation in which a specific piece arose."¹¹⁸

¹¹⁵Tucker, 6.

¹¹⁶Prov. 22.17; 23.12; 15.2ff.

¹¹⁷Prov. 22.20-21.

¹¹⁸Tucker, 8.

- Description of the genre: this second aspect concerns the history of genres and the power of oral tradition since there is a certain tenacity in the genres, but also flexibility and change as they develop. "Another way of putting the principle is to say that genres arise, develop, flourish and eventually decay, often giving rise in the process to mutations or new genres."¹¹⁹ Two factors need to be taken into consideration: the historical development of the genre, and the individuality of each speaker, writer or editor.¹²⁰

- Definition of the setting(s): since each genre originates in a particular setting or *Sitz im Leben*, one of the purposes of form criticism is to recover that setting through a study of the genre itself.¹²¹ This is achieved through determining, as much as is feasible, the social situation or other factors (i.e., the "style of an epoch") or language (*langue*, in the structuralist sense) which gave rise to the genre, to other typicalities of the text, or to the individual text at hand.¹²²

- Statement of the intention: at this stage, form criticism proposes "a statement of the purpose and function of the text,"¹²³ of "the mood and content, of the genre in general and specifically of the example under study."¹²⁴

¹¹⁹Tucker, 8.

¹²⁰Tucker, 8.

¹²¹Tucker, 9.

¹²²Williams, Lectures in the course "Current Issues in the Old Testament."

¹²³Tucker, 11.

¹²⁴Soulen, 73.

These four steps are essential. Form criticism is not merely concerned with analysis of the literary shape of the text. In addition to genre analysis and classification, it is also concerned with establishing or determining the "situation in life" (*Sitz im Leben*) which was instrumental in producing, shaping, or utilizing the particular genres. For Hayes and Halloday, "the phrase 'in life' denotes the historical and sociological dimension of form criticism which calls attention to the vital connection between literary genres and the structures and institutions which scholars have discerned in working with biblical texts and their cultural background."¹²⁵ Thus, the study of typical forms and content can lead one to grasp the typical life setting of a text.

6b. Definition of terms:

Some observations concerning terminology are in order. In the methodology described here, according to Tucker, "the terms 'structure' and 'genre' represent an attempt to bring precision and clarity to a point which has been assumed in form critical methodology but seldom articulated clearly and often obscured by the term 'form'."¹²⁶

"Structure" refers to the outline, the pattern or the schema of a given piece of literature or a given genre. For its part, "genre" refers to the type or *Gattung* itself. While the two concepts are distinct, they are inseparable, especially when one looks at literature as a form

¹²⁵Haye and Halloday, 77.

¹²⁶Tucker, 12.

critic. However, some confusion has resulted from the tendency by some to use the term "form" to mean both structure and genre. Yet, if the term form is used in reference to genre or *Gattung*, it should be made clear that the word has taken a secondary connotation.¹²⁷

To the ancient Israelites, God was not removed from their daily lives. Rather, He acted in history and was encountered in the ongoing affairs of men. Therefore, "instead of generalizing about the nature or being of God, ancient Israel tended simply to tell the story of God's acts."¹²⁸ Yet this story, reflective of the culture in which the Israelites lived, was only told in certain ways. It is evident that not all possible narrative genres are found in the Old Testament; some are found only rarely or in remnants. For example, myths and fairy tales are rare or nonexistent, and heroic tales are very scarce. On the other hand, saga, legend and history predominate. These facts can hardly be considered accidental.¹²⁹

A clear distinction between legend and saga must be made. According to Gunkel saga is the word to use, since there is no real legend in the Old Testament.¹³⁰ A legend is "the product of a more highly developed literary consciousness, and is decidedly more 'spiritual' in tone than the saga. Legends ordinarily deal either with holy men, holy places, or religious ceremonies."¹³¹ Thus, very few stories in the Old Testament may be called legends of holy men in the

¹²⁷Tucker, 12.

¹²⁸Tucker, 25.

¹²⁹Tucker, 26.

¹³⁰Gunkel, "Fundamental Problems . . .," 61.

¹³¹Tucker, 38.

strict sense of the term, for the same reason that there is little biography in the Old Testament.¹³²

Characterized by its brevity, a saga frequently reports things which are incredible. Thus, a saga may speak of the direct intervention of God in the affairs of man. As a mode of communication the "saga is not necessarily inferior to historical narrative, nor is it superior; it is just different, based on a different set of assumptions and operating within its own framework. Actually, the saga is less concerned with the past than the present."¹³³

The *Sitz im Leben*, or setting in life, is another expression used in form criticism. According to Gunkel, "every ancient literary type originally belonged to a quite definite side of the national life of Israel."¹³⁴ Thus, he asked the following questions: where does this genre appear? Functionally, where do hymns belong (in worship, therefore in the Temple)? Where do laws belong (in the courts, that is, the city gates)? Who is the speaker? Who is the audience? Etc. Coined by Gunkel, the phrase *Sitz im Leben* has become a common expression in biblical studies.¹³⁵

Another term frequently associated with form criticism is "intention." Just as every genre arises in a particular situation, it also arises in order to fulfill some particular purpose which focuses on

¹³²Tucker, 39.

¹³³Tucker, 52.

¹³⁴Gunkel, 61.

¹³⁵Tucker, 15.

the intention of the speaker, writer or editor. It further survives because it continues to be needed for that purpose. Thus, according to Tucker, "we must focus attention both upon the intention of the genre in general and upon the specific intention of the particular example before us."¹³⁶ This is due to the fact that the question of the intention of a genre, and of particular passages which use that genre, has a direct implication for exegesis and interpretation. "This question is particularly useful when it helps to distinguish between the intention of the ancient oral material and that of the collector or redactor of that material."¹³⁷

7. Conclusion

Assessment of the form critical method can be summarized as follows. Positively, form criticism helps us to better understand the literary history of Israel when source criticism fails to penetrate the relevant text. While source criticism addresses itself to a particular pericope and its genre, as well as to its purpose in the life of the community, it fails to probe deeper into the reasons of why that text is the way it is, as well as to what its function is in the life of the community. Furthermore, form criticism provides a good platform for comparison of the Biblical text with other literature of the Ancient Near East.

However, what is typical and representative is often allowed to overshadow what is unique and particular. Since form and content are

¹³⁶Tucker, 16.

¹³⁷Tucker, 17.

bound together, an exclusive attention to the *Gattung* loses the impact which form criticism could have. Furthermore, form criticism pays too little attention to biographical and psychological interpretation, and resists critical commentary because it is too skeptical of attempts to read a pericope within its historical context. Besides, a form may have had many *Sitz im Leben* before it was set down as a form.¹³⁸ Significantly, on anthropological grounds, the assumption that folk memory operated in small linguistic units is faulty. Large units of material could have been memorized during the Biblical period.

Most importantly, the study of the form of a text should not be done out of context.

B. Biblical Anthropology:

1. Introduction

"Will every generation set out anew to seek for and discover man?"¹³⁹ Thus does Wolff begin the book which is his quest for man in the Old Testament. Recognizing that the task is nearly impossible, due to the demands imposed on such a study, Wolff further asks: "Must man first of all fall sick before he discovers himself to be the object of essential investigation? Must a human society first perceive the extremity of its danger before noting that no field has been subject to so little research as contemporary man?"¹⁴⁰ He continues, stating the

¹³⁸ Muilenburg, 17.

¹³⁹ Hans Walter Wolff. *Anthropology of the Old Testament* (Philadelphia, PA: Fortress Press, 1974): 1.

¹⁴⁰ Wolff, 1.

problem by a series of other pertinent questions which, once again, draw us into the subject and force a confrontation with reality:

"Why does the progress of science and technology not only penetrate into new light but also into new darkness? Why is the misuse of scientific and scholarly knowledge and methods assuming threatening form, not only in the practice of the natural sciences but even in the so-called humanities? Why is research designed for the use of man--in medicine, chemistry, pharmacology, sociology, psychology and theology--suddenly bypassing man altogether?"¹⁴¹

Not satisfied to simply ask the questions, Wolf prepares to respond to them, setting the stage for the rest of his work. Taking into consideration the pressure of problems of daily existence, the opportunities for gain, specialized questions, total planning, statistics, tradition, indeed all things which distort the view of man in our time, he points out that,

in the middle of the mass consumption of requisites and remedies, utopias and psychoanalysis, an elemental hunger breaks out for the anthropology that has been so long neglected. Who is man? Where can we find him in the thicket of clever plans and misguided impulses, on the way from youthful ardor to frigid old age, between the lust for aggression and the suffering of the oppressed? What does he know about his condition, his time and his place in the world? In all the abundance of his knowledge, has man's most fundamental being become for him in the end the most alien of all?¹⁴²

¹⁴¹Wolff, 1.

¹⁴²Wolff, 1.

Herein lies the necessity of a reliable doctrine of man. The scholar who undertakes this imperative analysis of the nature of man is faced with that extreme borderline case in which the impossibility of objectification presents an insoluble problem. Can man really confront himself? Can man see himself from all sides? Challenged with this impossibility, man needs "the meeting with another, who investigates and explains him . . . [one who] can put the question: who am I?"¹⁴³

These questions about the nature of man, his life and destiny in the world around him also arose among the biblical witnesses. Thus, the basic anthropological concepts of the Old Testament help clarify the various aspects and dominating features of human existence, for "the wisdom literature and the psalms of lamentation and thanksgiving are actuated by the questions about the life of man in all its important phases between birth and death."¹⁴⁴ Furthermore, the question about man's real destiny in his world underlies many of the legal texts and prophetic sayings.

2. History

Robertson Smith is credited as being the first to specifically focus on an anthropological approach to the study of the Hebrew religion. In his Lectures on *The Religion of the Semites* he examined the earliest forms of Hebrew beliefs and rituals from the standpoint, common among anthropologists of his day, that the more developed forms of a religion could best be understood by a detailed study of the primitive

¹⁴³Wolff, 2.

¹⁴⁴Wolff, 4.

or rudimentary phases from which it had evolved.¹⁴⁵ He eventually parted company with some of the views of Wellhausen¹⁴⁶ by affirming the cohesiveness and compulsion of social rather than purely personal customs and convictions. Through the study of such ritual institutions as sacrifice, Robertson Smith endeavored to grapple with the nature of primitive religious belief among the Semites. He concluded that the ideas of atonement and communion were basic concepts of primitive Semitic religion.¹⁴⁷

At the end of the nineteenth century, Tylor's¹⁴⁸ and Robertson Smith's conclusions were modified by an approach that placed less emphasis upon individual primitive psychology and devoted increasing attention to the place that the forces of society as a whole occupied in the formulation of religious beliefs and customs. The first scholar to stress the importance of group-experience as a formative influence in the growth of primitive psychology was Wilhem Wundt.¹⁴⁹ Durkheim¹⁵⁰ and his followers¹⁵¹ developed Wundt's theories and associated such concepts

¹⁴⁵ W. Robertson Smith. *The Religion of the Semites - The Fundamental Institutions*. reprint. (New York, NY: Schocken Books, 1972).

¹⁴⁶ See Julius Wellhausen. *Prolegomena to the History of Ancient Israel*. Allan Menzies and J. Sutherland Black, transl. (New York, NY: Meridian Books, 1957).

¹⁴⁷ Robertson Smith, 251-253; 312-317.

¹⁴⁸ Edward B. Tylor. *Researches into the Early History of Mankind and the Development of Civilization* (Boston, MA: Estes and Lauriat, 1865, 1878); *Primitive Culture: Researches into the Development of Mythology, Philosophy, Religion, Art and Custom* (Boston, MA: Estes and Lauriat, 1864); *Anthropology: an Introduction to the Study of Man and Civilization* (New York, NY: D. Appleton and Co., 1881).

¹⁴⁹ Wilhem Wundt. *Lectures on Human and Animal Psychology*. 2 vols. J.E. Creighton and E.B. Titchener, transl. (London, England: S. Sonnenschein & Co., 1894).

¹⁵⁰ Émile Durkheim. *Les formes élémentaires de la vie religieuse*, 1912. *The Elementary Forms of the Religious Life*. Karen E. Fields, transl. New York, NY: Free Press, 1995.

¹⁵¹ R.H. Codrington. *The Melanesians: Studies in their Anthropology and Folklore*. reprint. (Oxford, England: The Clarendon Press, 1891, 1969).

as *mana*¹⁵² with the dynamics of group life. For his part, Lévy-Bruhl pointed to the essential unity of those forces upon which the individual drew for his magical rites, and which at the same time furnished the basis for collective religious functioning. He showed that, for primitive man, causation resulted from the activity of invisible animistic forces which were deemed to be at work in the natural environment.¹⁵³

However, all these theories suffered from the basic defect of the nineteenth-century *Zeitgeist*, that is, the endeavor on the part of scholars to explain the incidence of all phenomena in terms of one relatively uncomplicated single feature, process, or principle. Consequently, "in the biological sphere the concepts of organic evolution as expounded by Darwin and Wallace were held to constitute the key to terrestrial and human origins alike, while in the burgeoning realm of psychological study the dominant principle of human motivation was held by Freud to be intimately related to primitive sexual urges buried deep in the unconscious mind."¹⁵⁴

For the scholars of that era, an understanding of the origins of Israelite literature had already been expounded at length by Graf and

¹⁵²Widely diffused conception in the primitive world of a spiritual potency, or force, or principle, in animate and inanimate things. See Max Weber. *Ancient Judaism*. reprint (London, England: Collier Macmillan Publishers, 1952): 140.

¹⁵³Lucien Lévy-Bruhl. *How Natives Think [Les fonctions mentales dans les sociétés inférieures]*. Lilian A. Clare, transl. (Princeton, NJ: Princeton University Press, 1910, 1926, 1985); *The Soul of the Primitive [L'âme primitive]*. Lilian A. Clare, transl. (New York, NY: 1923, 1966); *Primitive Mentality [La mentalité primitive]*. Lilian A. Clare, transl. (New York, NY: AMS Press, 1922, 1978).

¹⁵⁴R.K. Harrison. *Introduction to the Old Testament* (Grand Rapids, MI: Wm. B. Eerdmans Pub. Co., 1969): 51.

Wellhausen. By the same token, when looking at the field of anthropology, the unifying factor which was popularly alleged to underlie all primitive religious activity was being interpreted by scholars in terms of concepts such as *mana*, *magic*, *tabu*, and the like. It became quite evident, to students of anthropology at least, that this type of approach was flawed. Soon it was discovered that as research progressed, it was increasingly impossible to relate the phenomena of primitive life to one comprehensive principle of interpretation.¹⁵⁵ Thus, Franz Boas¹⁵⁶ and A. Goldenweiser,¹⁵⁷ among others, attempted to remedy to the deficiencies of theoretical anthropology, rejecting the idea of primitive culture as a general condition characteristic of all mankind in favor of an approach which studied patterns of culture in specific geographic areas and related them to corresponding cultural phenomena in neighboring localities.

In a series of studies prefacing the third edition of *The Religion of the Semites*, by Robertson Smith, S.A. Cook applied the historical method of interpretation in anthropology to the problems of early Semitic religion. Cook recognized the close interrelationship that Smith had pointed out between the secular and sacred in primitive life. However, he also saw that such situations were typified by a remarkable degree of complexity. Therefore, for him, the problem did not consist so much of postulating some sort of evolutionary process from comparatively simple to more highly differentiated forms as of making some attempts to

¹⁵⁵ Harrison, 51.

¹⁵⁶ Franz Boas. *The Mind of Primitive Man* (New York, NY: The MacMillan Co., 1911); *Anthropology and Modern Life* (New York, NY: W.W. Norton & Co., 1928, 1932).

¹⁵⁷ Alexander Goldenweiser. *Early Civilization: An Introduction to Anthropology* (New York, NY: A.A. Knopf, 1922).

assess the significance of individual cultural patterns as they were related to the larger environment of society.¹⁵⁸ The British scholar S.H. Hooke, who has been called the "high priest" of cultic patternism, further developed this idea.¹⁵⁹ From the theoretical assumption that there had been a diffusion of one cultural pattern of ritual mythology throughout the religions of the Ancient Near East, Hooke and his followers applied the form-critical method employed by Mowinckel and Albright¹⁶⁰ in an attempt to show that a recognizable set of rituals and myths had been the common property of the various ancient Near Eastern cultures.¹⁶¹ Although not going to the extremes of the 'pan-Babylonian' school, these scholars stressed that all mythical conceptions had their origin in cultic rites. Thus, Hebrew myths and rituals, particularly those connected with sacral kingship and the so-called "enthronement festival," were intimately connected with similar concepts in the thought of other Near Eastern peoples, particularly those of Babylonia.

¹⁵⁸ See Stanley Arthur Cook's introduction and additional notes in W. Robertson Smith. *Lectures on the Religion of the Semites* (New York, NY: Ktav Pub. House, 1927, 1969): xlvi, 590-593. See also his "The Religious Environment of Israel" in *The People and the Book*. Arthur Samuel Peak, ed., (Oxford, England: The Clarendon Press, 1925): 42-44.

¹⁵⁹ Harrison, 52.

¹⁶⁰ Sigmund Mowinckel and William Foxwell Albright. "The Babylonian Matter in the Predeuteronomic Primeval History (JE) in Gen. 1-9" in *Journal of Biblical Literature* 58 (1939): 87-103. See also, Sigmund Mowinckel. "Hat es ein israelitisches Nationalepos gegeben?" in *Zeitschrift Für Die Alttestamentliche Wissenschaft* 53 (1935): 130-152; "Zur Geschichte der Dekaloge" in *Zeitschrift Für Die Alttestamentliche Wissenschaft* 55 (1937): 218-235. See William Foxwell Albright. "Contributions to Biblical Archaeology and Philology" in *Journal of Biblical Literature* 43 (1924): 363-393.

¹⁶¹ See S.H. Hooke. "The Myth and Ritual Pattern of the Ancient East" in *Myth and Ritual: Essays on the Myth and Ritual of the Hebrews in Relation to the Culture Pattern of the Ancient East*. S.H. Hooke, ed. (London, England: Oxford University Press, 1933); *The Labyrinth: Further Studies in the Relation Between Myth and Ritual in the Ancient World* (New York, NY: The MacMillan Co., 1935).

In a series of essays published in 1956, Hooke modified his views on cultic patternism and conceded a certain nucleus of law and custom as uniquely Mosaic. At the same time, though, he viewed the bulk of Israelite worship and cultic forms in the light of Egyptian and Babylonian ritual and liturgical patterns.¹⁶² During this time Cook had put the comparative method of anthropological study to better use by endeavoring to show that, though many concepts in the Old Testament narratives could be paralleled by similar ideas in other ancient Near Eastern religions, they may well have undergone a process of transformation and change during the early period of Hebrew History to the point where, in their final form, they had acquired a uniquely Israelite character.¹⁶³

While learned disquisition on biblical anthropology had certainly been in existence for some time,¹⁶⁴ it was during and after National Socialism's evil misinterpretation of man that some scholars rediscovered "man" in their dialogue with the Bible. The early postwar years brought some quite modest exegetical studies.¹⁶⁵ Such authors were thinking of their contemporaries by whom man had been turned into a riddle through an inhuman distortion. In the search for a criterion they took their stand on the claims of binding force made by biblical statements, though they did not fail to recognize the historical

¹⁶² S.H. Hooke. *The Siege Perilous: Essays in Biblical Anthropology and Kindred Subjects* (London, England: SCM Press Ltd., 1956): 173-176.

¹⁶³ Stanley Arthur Cook. *The Old Testament: A Reinterpretation* (New York, NY: The MacMillan Co., 1936): 88-90.

¹⁶⁴ See, for example, Pedersen, Johannes. *Israel: Its Life and Culture*. I-II, III-IV. 1926; reprint (London, England: Oxford University Press, 1927, 1964).

¹⁶⁵ See, for example, Walther Eichrodt. *Man in the Old Testament*. K. and R. Gregor Smith, transl. (London, England: SCM Press, 1951); Walther Zimmerli. *Man and His Hope in the Old Testament*. Gilbert W. Bowen, transl. (London, England: SCM Press, 1971).

character of these statements. Karl Barth, for his part, pointed with unprecedented thoroughness and conviction to a place where man could know himself to be truly understood and could discover his real humanity.¹⁶⁶

From Barth's perceptions that "the alternative between theism and atheism, between metaphysics and nihilism, in which man was left to himself, has already been overcome,"¹⁶⁷ today's scholars are beginning to draw a new conclusion. Pursuing the unique features of Old Testament thinking about man, they are inquiring into the nature of man in the light of basic anthropological concepts and are trying to discern the physical and spiritual image of the Hebrew and the course of his life.¹⁶⁸ Accordingly, a number of extensive monographs have appeared which deal with particular anthropological problems, such as the concepts of the soul, the spirit or the flesh and themes like death, the experience of desolation, or the position of man and woman.¹⁶⁹

3. Methodology

The logical question which ought to be asked is the following: how can this goal be achieved today? It is evident that the Old Testament is not based on a unified doctrine of man. Furthermore, we are not in a position to trace a development in the biblical image of man. The fact

¹⁶⁶ Karl Barth. *Church Dogmatics: The Doctrine of Creation*. vol. 3, pt. 2 (Edinburgh, Scotland: T. & T. Clark, 1958-1961).

¹⁶⁷ Wolff, 2.

¹⁶⁸ Aubrey Rodway Johnson. *The Vitality of the Individual in the Thought of Ancient Israel* (Cardiff, Wales: University of Wales Press, 1949, 1969); G. Pidoux. *L'homme dans l'Ancien Testament*. Cahier Théologique 32 (Neuchâtel, France: Delachaux & Nestlé, 1953); Ludwig Köhler. *Hebrew Man*. Peter R. Ackroyd, transl. (London, England: SCM Press Ltd., 1956, 1973).

¹⁶⁹ See, for example, Roland de Vaux. *Ancient Israel*. 2 vols. (New York, NY: McGraw-Hill Book Co., 1965).

is that every individual biblical document presupposes a particular view of man. This single point does create a challenge to a systematic method of biblical anthropology, as "it must be recognized that the human person remains important from one end of the Bible to the other,"¹⁷⁰ and that "furthermore, there is certainly a development in the understanding of humanity between the origins of the Hebrew people and the time of the early Christian community."¹⁷¹ On the other hand though, there is an urgent wish to put to the texts a selection of current questions or even "all the possibilities."¹⁷² Therefore, "biblical anthropology as a scholarly task will seek its point of departure where there is a recognizable question about man within the texts themselves. The whole breadth of the context must be drawn upon in order to work out the specific answers."¹⁷³ The whole exercise, it soon becomes evident, points to the fact that the essential contributions "bear the character of dialogue and that the consensus in their testimony about man is, in spite of all mutations in its linguistic form, astonishing from the point of view of the history of thought."¹⁷⁴ Therefore, in the anthropologization of theology, man sees himself as called into question, especially as he dialogues, above all, with God. Man finds himself searched out and not so much established for what he is, as called to new things. Man, therefore, as he is, is anything but the measure of all things,¹⁷⁵ or, as my first thesis director, Shannon-

¹⁷⁰ Shannon-Elizabeth Farrell. "Biblical Anthropology" in *Dictionary of Fundamental Theology*. René Latourelle and Rino Fisichella, eds. (New York, NY: Crossroad, [no date]): 19.

¹⁷¹ Farrell, 19.

¹⁷² Köhler, 13.

¹⁷³ Wolff, 3.

¹⁷⁴ Wolff, 3.

¹⁷⁵ Wolff, 3.

Elizabeth Farrell, wrote, "biblical anthropology reminds researchers that many cultural traditions are perhaps centered on realities other than those of the human being."¹⁷⁶

This contemplative reflection and introspection affect the methodology, for here anthropological problems cannot be solved by disregarding theology. "In correction of the fashionable anthropologization of theology, the scholar will have to be alive to the possibility of a theological understanding of anthropological phenomena"¹⁷⁷ because Israel's ideas of man "can only be understood in the light of the distinctive nature of her faith."¹⁷⁸ Thus, any scholar who undertakes a study about man discovers the chance of entering into dialogue with the Other, a dialogue through which he begins to understand his being as a man.¹⁷⁹ Thus, "one must recognize an element peculiar to biblical thought. In the history of a peculiar people--and, eventually, in all human life--biblical thought perceives the presence of God."¹⁸⁰

In order to achieve this dialogue, some interaction with the culture and history of text of Holy Scripture is mandatory. This becomes very evident in light of the contributions that archeology has made to

¹⁷⁶Farrell, 21.

¹⁷⁷Wolff, 3.

¹⁷⁸Von Rad, Gerhard. *Old Testament Theology*. vol. 2 (London, England: SCM Press Ltd., 1965): 347-348. Jürgen Moltmann, in *Man: Christian Anthropology in the Conflicts of the Present*. John Sturdy, transl. (Philadelphia, PA: Fortress Press, 1974): 9, 19, already notifies his readers in the introduction that "a book about 'Man' will inevitably slip into being a book about God.

¹⁷⁹See, for example, Martin Buber. *I and Thou* (New York, NY: Charles Scribner's Sons, 1937, 1970).

¹⁸⁰Farrell, 19.

the understanding of the Old and New Testaments. Furthermore, "it is certainly true that without knowledge of history and culture the interpreter may easily fall into many errors."¹⁸¹ As secondary elements, then, history and culture are essential for the understanding of content.

History involves the selection of various factors which make up the life of an individual, or of groups of individuals, within a nation; of nations themselves, or of groups of nations. On the basis of the factors selected, the historian gives meaning, that is, his meaning, to the acts or purposes of an individual, a group, or a nation.¹⁸² Thus, the interpreter of Scripture should not only know the historical situation behind any narrative or passage, but he should also know the past history behind any particular incident.¹⁸³

Those who investigate historical backgrounds have adopted the German phrase *Sitz im Leben* as the *modus operandi* of their methodology. This phrase means "life situation." However, Mickelsen reminds us that "no matter how hard one studies the life situation of the biblical writers, such study by itself will not bring him to the biblical perspective of life in faith."¹⁸⁴ The *Sitz im Leben* is only part of the picture. Minear points out that there is also the *Sitz im Glauben*, the "faith situation," or that which brings about a position and perspective

¹⁸¹A. Berkeley Mickelsen. *Interpreting the Bible* (Grand Rapids, MI: Wm. B. Eerdmans Pub. Co., 1963, 1985): 159.

¹⁸²Mickelsen, 159.

¹⁸³Mickelsen, 166.

¹⁸⁴Mickelsen, 162.

in faith.¹⁸⁵ Furthermore, the perspective of the biblical writers is that of men in a relationship with God. The problems with which they wrestle are not merely problems of thought but also problems of destiny.¹⁸⁶

Culture, on the other hand, is part of history because it concerns the creative result of man's actions. It involves the ways, methods, manners, tools, institutions and literary productions of any people.¹⁸⁷ Idolatry and sorcery, as well as the forms of worship of the living God, are all a part of a people and their culture.¹⁸⁸ These elements reveal how a people lived, what values they stressed and why they did or did not prosper. Thus, culture involves the totality which emerges out of the elements that make up every day life. "Culture, in the anthropological sense, is all the ways and means, material and social, whereby a given people carry on their existence."¹⁸⁹ Another way to say this is that "culture is the way a group of people views things or does things."¹⁹⁰ In order to clarify this link between faith and culture, a link which seems quite evident in the study of biblical anthropology, my former research director, Shannon-Elizabeth Farrell, in the mid-90's, changed the title of her research project from "*Anthropologie Biblique*" to that of "*Foi Biblique et Culture Humaine*."

¹⁸⁵ Paul Sevier Minear. *Eyes of Faith: A Study in the Biblical Point of View* (Philadelphia, PA: The Westminster Press, 1946): 181.

¹⁸⁶ Minear, 118; Farrell, 19.

¹⁸⁷ Bernard Ramm. *Protestant Biblical Interpretation* (Grand Rapids, MI: Baker Book House, 1970): 96.

¹⁸⁸ Mickelsen, 160.

¹⁸⁹ Ramm, 5.

¹⁹⁰ J. Robertson McQuilkin. *Understanding and Applying the Bible* (Chicago, IL: Moody Press, 1983): 39.

As one goes about studying biblical anthropology, that is, biblical men within their historical and cultural context, various elements need to be taken into consideration. The first is geographical. While most Bible atlases contain maps, they also present much more than geography. They usually include a commentary about peoples and nations that came into contact with Israel and the early Christians. They point out important literary and archeological discoveries. The chronological outlines of ancient history are helpful because they show the history of the patriarchs, Israel and the early Christians, as it really was--one of interaction with world empires, peoples and nations who moved across the horizons of the Near East. A careful study of maps and of textual explanations gives the student an indispensable picture of the setting for the biblical narrative.¹⁹¹ The interpreter of Scripture needs to keep in mind, at all times, that Palestine was in truth the crossroads of the Near East. Through this land marched the great leaders of the world empires. But whether the setting is Palestine, Egypt, Syria, Assyria, Babylonia, Asia Minor, Greece, Italy or any of the islands of the Mediterranean, the exegete should know such factors as climate and the relation of the setting to the sea, desert, mountains, etc.; roads and the kinds of terrain; how the people were distributed in the particular geographical situation. For, "when one is aware of such

¹⁹¹See, for example, George Ernest Wright and Floyd V. Filson. *The Westminster Historical Atlas to the Bible*. rev. ed. (Philadelphia, PA: The Westminster Press, 1956); Emil G. Kraeling. *Rand McNally Bible Atlas* (New York, NY: Rand McNally, 1956); *Baker's Bible Atlas*. Pfeiffer, Charles F. et al, eds. (Grand Rapids, MI: Baker Book House, 1961); Yohanan Aharoni and Michael Avi-Yonah. *The MacMillan Bible Atlas* (New York, NY: The MacMillan Pub. Co., 1968, 1977); *The Harper Concise Atlas of the Bible*. James B. Pritchard, ed. (New York, NY; Harper Collins Publishers, 1991).

things, the message he is interpreting or the history which he is reviewing becomes real."¹⁹²

A second element to consider is the extent to which political factors affected either the Old or New Testaments. In both, political rulers and leaders often played an important role in the life of the Jewish people and early Christians. Thus, where a ruler or leader is mentioned by name, we should get all the information possible about him. The exact nature of the political climate at the time of any writing is of great help in interpreting the meaning of that writing.¹⁹³

A third element to be considered is that of the socio-religious situation. This large segment of every-day living has to do with our social relationships from birth to death. Certain specialized customs are observed in every culture around important events, such as the birth of a child. In Israel these involved the place of worship, the priest, the parents and the child. Among all people there are specific customs that surround marriage. Legal transactions in ancient times often took place at the gate of the city, which was the place where the court held session. Religious life found its expression in the tabernacle, in the temple, in the synagogues and in the local congregations of Christians. Incidentally, the role of the city in the life of ancient peoples is in itself an interesting phenomenon. People lived in the cities and went outside of the city by day to work in the fields. For safety they returned at night to a fortified place.¹⁹⁴

¹⁹²Mickelsen, 166.

¹⁹³Mickelsen, 166.

¹⁹⁴Mickelsen, 168.

A fourth element relates to the stability of the economy. When we look at the historical scene into which the message of God was proclaimed, we see that matters of trade, agriculture, craftsmen and their products, travel by sea and by land all helped determine whether the economy was stable or unstable. Absence of rainfall meant famine. Earthquakes blotted out whole cities. The ravages of war remained for generations. Whole populations were removed and deported to other locations. Now, it is true that these environmental factors are only rarely referred to in Scripture since the message supersedes all such details, nevertheless, "the stark realities of life and death, of the struggle to obtain the bare essentials of life--these things daily confronted ancient man."¹⁹⁵

A fifth, yet most important, element is that which concerns the concrete, physical and environmental factors of everyday living. Often referred to by archeologists as material culture, it involves the things people used in their daily existence and includes the homes people lived in, the objects in their homes, the tools for their work, the kind of clothing they wore, their weapons of war, the implements for getting food, the means of transportation, etc.¹⁹⁶ The importance of the material culture in any narrative may not be immediately apparent. However, if the culture of a people is narrowed, as Redfield defines it, to the people's "total equipment of ideas and institutions and

¹⁹⁵Mickelsen, 169.
¹⁹⁶Mickelsen, 169.

conventional activities,"¹⁹⁷ or as Nida says, to "the whole behavior patterns of a particular people,"¹⁹⁸ then the wide variety among cultures becomes apparent.

4. Conclusion

Anthropology is valuable because it helps us see how the way of life of the group profoundly influences the actions and responses of the individual.¹⁹⁹ Whatever men wrote, and continue to write, they have written from out of their particular cultural backdrop. Their culture modifies, determines, guides, colors or influences the manner in which they express themselves. As Ramm writes, "even where some author reacts against his culture, attempts a deliberate break from it, or becomes a caustic critic of it, he never really escapes his culture. More realistically it is perhaps one smaller or lesser part of his culture that is the basis for the assault on the larger segment of his culture."²⁰⁰ Therefore a study of culture is indispensable in biblical interpretation.

While the prerequisites for a new, more comprehensive biblical anthropology seem to be met, there is still a demand for more. The schemes of systematic theology as regards anthropology are not

¹⁹⁷ Robert Redfield. *The Primitive World and Its Transformation* (Ithaca, NY: Cornell University Press, 1953): 85.

¹⁹⁸ Eugene A. Nida. *Message and Mission: The Communication of the Christian Faith* (New York, NY: Harper and Brothers, 1960): 35.

¹⁹⁹ For further material on ways of life and culture patterns see Ruth Benedict. *Patterns of Culture* (New York, NY: Houghton Mifflin Co., 1934, 159); Alfred Louis Kroeber. *Anthropology* (New York, NY: Harcourt, Brace & Co., 1948); Herbert C. Jackson, "The Forthcoming Role of the Non-Christian Religious Systems as Contributory to Christian Theology" in *Occasional Bulletin of Missionary Research*, 12, 3 (March 15, 1961): 23-42.

²⁰⁰ Ramm, 152.

sufficient. They must face the problems of current philosophical anthropology, as well as those of psychology, sociology and political science.²⁰¹ It was to such philosophical anthropology that my first thesis director, Ms Farrell, referred to when she wrote at the beginning of her article on biblical anthropology: "If it is true that God took on flesh in Jesus Christ, then one can assume that human nature was respected in the process. There is therefore no need to fear subjection of the Christian faith to the scrutiny of anthropological sciences such as philosophy, sociology, or psychology."²⁰²

VI. Concluding Remarks

The custom of the levirate presents two problematic consequences for the widow: first, the deceased's brother may try to profit at her expense and demand payment in return for performing the rite; second, though rare, the brother-in-law may be too young to perform the rite and so the widow has to wait until he reaches puberty, when he can then do so.²⁰³

Within the most fundamental social unit, the family, two areas were most susceptible to usurpation or violation: the preservation of the patrimony and the sexual purity of family members.²⁰⁴ Therefore, the

²⁰¹See, for example, Wolfhart Pannenberg. *What is Man? Contemporary Anthropology in Theological Perspective*. Duane A. Priebe, transl. (Philadelphia, PA: Fortress Press, 1970); see also Jürgen Moltman. *Man: Christian Anthropology in the Conflict of the Present*. John Sturdy, transl. (Philadelphia, PA: Fortress Press, 1974).

²⁰²Farrell, 17.

²⁰³Ruth Katz and Nitza Ben-Dor. "Widowhood in Israel" in *Widows*, vol. 1. Helena Znaniecka Lopata, ed. (Durham, NC: Duke University Press, 1987): 138.

²⁰⁴Ron E. Tappis. "The Law Behind the Decalogue: Understanding the Commandments as a Code of Kinship." Paper presented at the Society of Biblical Literature annual

aim of the levirate regulation was threefold: to perpetuate the deceased's name and clan, to preserve the balance in land inheritance, and to provide for the widow.²⁰⁵ However, a comparison of Gen. 38.1-11 with Deut. 25.5-10 yields the impression that this custom was weakening by Deuteronomic times, as evidenced by a certain element of choice being present in Deuteronomy,²⁰⁶ and the penalty for noncompliance having been softened from death to public shame.²⁰⁷ A further stage in the decline of the application of the principles of the levirate ensued with the Priestly enactment that daughters had the right to inherit their father's estate.²⁰⁸ Moreover, the book of Ruth²⁰⁹ describes a variant of the levirate law, where the *גֹּאֵל*, or redeemer, is not the deceased's brother but his next of kin, and where the levirate agreement also involves land-redemption rights.²¹⁰

The study of the levirate obligation is rendered more complicated still when viewed in the light of the Levitical laws regulating close kin relationships, for in them the prohibition for a man not to approach his brother's wife is spelled out in no uncertain terms.²¹¹ This prohibition is further enhanced by a very specific penalty²¹² which makes it extremely clear that there are consequences for infringing upon very well defined close-kin relationships.

meetings - Biblical Law Group (November 1996): 1. See Gen. 34.7; Jos. 7.15; Jg. 20.6; 2 Sam. 13.12; Jer. 29.23.

²⁰⁵ Cairns, 216.

²⁰⁶ See Deut. 25.5b, 7.

²⁰⁷ Cairns, 216.

²⁰⁸ Num. 27.1-11.

²⁰⁹ Ruth 3-4.

²¹⁰ Cairns, 216.

²¹¹ Lev. 18.16.

²¹² Lev. 20.21.

Herein lies the problem. In which instance was it allowable, permissible and mandatory, for a man to have sexual relations with his brother's wife? Why was it necessary to regulate such an action? If there was a need for such laws, when and how were these applied, if ever? Do we have examples where proper or improper close-kin relationships did take place and where the appropriateness of such actions was not frowned upon? These questions, as they relate to the widow and its economic well-being will be the subject of this research.

The purpose of this study, accordingly, will be to investigate the law of the levirate (Deut. 25.5-10), its ethical and economic consequences, and how it relates to the laws of incest (Lev. 18.16 and 20.21). However, this stated problem is not as simple as it first appears. Beside the obvious difference of the state of the husband (in one law he is dead, while in the other he is, or could be, alive), the question which arises is the following: what renders the taking of one's brother's wife legitimate in one case and forbidden in the other? We will argue that the well-being of the widow legitimized the once-forbidden relationship, since the bearing of a son meant that he could take care of his mother in her old age.

In order to demonstrate the above rationale, the following steps will be undertaken: step one, the care of widows in the Ancient Near East in general will be considered. While various rules and regulations for the care of widows seem to have been in practice, these varied from culture to culture. Also, since there existed different categories of

widows, our emphasis will be upon widows who had no son, as this will relate directly to the law of Deut. 25.5-10. An investigation of the different laws of the levirate will be carried out, and the origins and applications of close kin relationships, with their implications, will be looked at so as to obtain a better understanding of the purpose of these laws.

In a second step, the care of widows in the Old Testament will be investigated in light of its cultural and sociological contexts. In order to illustrate this, the stories of Judah and Tamar²¹³ and that of Ruth will be analyzed, along with some other instances where widows were either taken care of or neglected.

We will then be in a position to have a clearer understanding of the purpose of the law of the levirate and to see if it was applied, simply referred to or totally ignored.

²¹³Gen. 38.

CHAPTER 1

CARE OF WIDOWS IN THE ANCIENT NEAR EAST

I. Introduction

Up to the middle of the nineteenth century, evaluation of the Mosaic Law could be made by biblical scholars only on the basis of relatively modern law, going back through the Middle Ages to Roman Law. However, with the deciphering of the cuneiform and hieroglyphic scripts a large amount of literature was made available and, although very little legal material has come from Egypt, thousands of clay tablets have come from Mesopotamia and the vast expanse of the Mediterranean basin.¹ The deciphering of these hieroglyphic and cuneiform documents has fueled the burning issue of foreign influence on the biblical tradition. It is obvious that Israelite tradition did not develop in an isolated vacuum. Geographically, Israel was part of the Ancient Near East. Both history and archaeology inform us that political, commercial, and cultural relations with its neighbors were numerous and varied. So, while the Old Testament seems to present the ancient religion of Israel as a constant, the historical truth is much more complicated than this.²

There are many similarities between biblical ideas, practices, or narratives and extra-biblical material. While no one would (could!) deny this, Old Testament scholars do not all agree on the utilization of this

¹G. Herbert Livingston. *The Pentateuch In Its Cultural Environment* (Grand Rapids, MI: Baker Book House, 1974): 171-172.

²Helmer Ringgren. "The Impact of the Ancient Near East on Israelite Tradition" in *Tradition and Theology in the Old Testament*. Douglas A. Knight, ed. (Sheffield, England: Sheffield Academic Press, 1977, 1990): 31.

material. Oftentimes the task has degenerated into "parallel hunting," that is, finding extra-biblical parallels for biblical ideas or customs. And, "as soon as such a parallel has been found, all problems seem to be solved: the parallel is there, what more do we need?"³ However, it is only when the original meaning and function of a certain parallel have been determined that we are able to use it to bring light on the biblical text. We may, therefore, "ask what elements are part of a common heritage, what elements are really 'imported' in the course of Israelite history, and what elements of tradition are the result of a protest against foreign ideas."⁴

The Old Testament itself insists on the Mesopotamian origin of Israel's ancestors and, therefore, most of the similarities between the biblical and Mesopotamian traditions must stem from this period. Moreover, beside this common heritage, political and commercial contacts between Israel and its neighbors over many centuries did provide ample opportunity for the import of ideas and practices. The same is true of the Egyptianizing elements, since Old Testament tradition locates part of Israel's early history in Egypt, while later in its history Israel had some very close relationships with Egypt. The reign of Solomon, most particularly, saw the establishment of close ties with Egypt with the likely result of Egyptian influence on many aspects of Israelite institutions.⁵ The Canaanite influence, for its part, is far more

³ Ringgren, 32.

⁴ Ringgren, 42.

⁵ Ringgren, 44. He further states: "The Hittites constitute a problem. Although Hittites are mentioned occasionally in the Old Testament, there were no direct contacts between the classical Hittite empire and Israel. The Hittite vassal treaties, which seem to have left their traces in Israelite covenant structure, must have been part of a wider cultural context which just incidentally has been preserved in Hittite sources."

complex. Palestine was under the control of the Canaanites for a long time. Thus, coexistence with them, voluntarily or by necessity, facilitated the adoption of many of their ideas and practices, both religious and secular.

Hence, foreign influences must be given their proper place. While they cannot be denied, neither can they be exaggerated. Most importantly, "it should be stressed that foreign ideas were never taken over unchanged but were adapted to suit their new Israelite context."⁶

Because of the historical and cultural connections between the people of Israel and the people of the Ancient Near East, it may be assumed quite confidently that the laws found in the Old Testament are in some ways related to other legal collections current during the same period.⁷ Speiser has demonstrated that the strength of Mesopotamian law is indicated by its use in Assyria at a time when Assyria was an enemy

⁶ Ringgren, 45. He writes:

...it is necessary to keep in mind that the Old Testament idea of revelation is not limited to God's speaking directly to chosen people such as Moses or the prophets. According to the Old Testament view God reveals himself not only in direct words but also through his acts in history. Amos was convinced that Yahweh had not only delivered Israel out of Egypt; he had also brought the Philistines from Caphtor and the Arameans from Kir (Amos 9.7). The other nations were not beyond the reach of Yahweh's mighty arm. If Israel was right in the assumption that Yahweh had revealed himself by acting in its history, it would be presumptuous to think that this acting took place exclusively in Israel. It is conceivable, therefore, that pieces of Yahweh's revelation are to be found also among those other peoples, or to put it differently, that elements of his revelation found their way into Israel through the faiths of those other nations. If God is able to use the events of history to get across to his people, he might also be able to use the traditions of the people who took part in these events to make himself and his plans known to his people. Is it too bold to assume that 'pagan' thinking about God could contain sparks of truth? Does not Paul say in his speech on the Aeropagus that the nations might 'feel after him and find him'? For 'he is not far from each one of us' (Acts 17.27).

⁷ Godfrey Rolles Driver and John C. Miles. *The Babylonian Laws* (Oxford, England: The Clarendon Press, 1955-1960): 9.

of Babylon, and by its existence in Ugarit.⁸ More recently, Westbrook has shown that the laws of ancient Israel were an integral part of the legal tradition of the Ancient Near East.⁹ We can therefore say with Van Houten that "the many similarities between Mesopotamian law and Old Testament law are to be explained by a common legal tradition which was an integral part of similar underlying culture. The judicial principles, such as equal retribution, which underlie the law, produced a similar customary law."¹⁰

A. Ancient Near Eastern kings and codes of laws:

In Mesopotamia the king was, fundamentally, subject to decrees of the gods and goddesses. However, he needed to have the approval of the council of elders in the city-state before he could make major decisions. So, while on the religious side the king was under the sanctions of omens and divine curses, on the civil side he was obligated to pay heed to the tradition of legal decisions made by courts in cities and regions for centuries past.¹¹ Certainly, the king had a role to play in the legal affairs of the people. In fact, all the ancient Middle Eastern law codes known to us are associated with kings, though more often than not their function was limited to classifying customary procedures rather than actually originating or promulgating laws and decisions.¹² Drane notes that "since the laws of a state are a vital

⁸E.A. Speiser. "Cuneiform Law and the History of Civilization" in *Proceedings of the American Philosophical Society* 107 (1963): 538-539.

⁹Raymond Westbrook. *Studies in Biblical and Cuneiform Law* (Cahiers de la Revue Biblique, 26; Paris, France: Gabalda, 1988): 118-126.

¹⁰Christiana Van Houten. *The Alien in Israelite Law*. JSOTSup 107 (Sheffield, England: Sheffield Academic Press, 1991): 25.

¹¹Livingston, 173.

¹²John Drane. *Old Testament Faith: An Illustrated Documentary*. (San Francisco, CA: Harper & Row, 1986): 104.

part of its self-understanding, it was vital for the king to be involved in this way if his own position was to be maintained."¹³ Thus we find that early in the third millennium BCE, written legal documents became common in trade, politics, domestic life, and court verdicts. Livingston, in fact, emphasizes this point by stating that "literally thousands of clay tablets illustrate legal practice in Sumeria, Babylon, and Assyria, and among the Hurrians, Amorites, and Hittites."¹⁴

Law, for these ancient people, was regarded as being an impersonal aspect of the cosmic order, backed by terror-ridden oaths and curses, and becoming, thus, the major unifying force that bound the various ethnic groups into a common culture. Consequently, in such a culture, "the possession of legal documents seemed a matter of life and death,"¹⁵ and as a matter of course major codes, or compilations, of laws, were put together at the inception of empires to help establish them with a more or less stable base.

Various types of cuneiform evidence exist and the value of each to biblical studies has to be determined individually. Very early in Sumeria there developed a tradition of composing collections of legal cases. It seems that the purpose of these collections was much more for scholarly and jurisprudential reasons than statutory. The compilers brought together, and elaborated upon, legal type-cases that illustrated the ideal legal principles.¹⁶ These collections or codes of laws are

¹³Drane, 104.

¹⁴Livingston, 173.

¹⁵Livingston, 175.

¹⁶Tikva Frymer-Kensky. "Patriarchal Family Relationships and the Near Eastern Law." *Biblical Archeologist* 44, 4 (Fall 1981): 210.

commonly known by the name of the ruler who commissioned them. The first major identifiable one is that of Ur-Nammu, king of the city of Ur in southern Iraq, who ruled from 2111 to 2098 BCE. This collection is written in Sumerian, as is that of Lipit-Ishtar. Around 1800 BCE, Akkadian, the Semitic language of Babylon, was used in the production of new texts of laws. The first such collection known to us is the "Laws of Eshnunna," a prominent city of the time on the Dyalu River. In this particular instance the laws were named after the city they were found in because the beginning of the tablet, where the king's name would have been mentioned, is broken off. Next are the Laws of Hammurabi, the most extensive and detailed of all these collections, and the most copied and studied in the schools of Babylon.¹⁷ The practice of the study of law through such documents spread from there to the other cuneiform civilizations, producing collections in Assyria, among the Hittites, and again from Babylonia in the Middle Babylonian period.¹⁸ In addition to these collections of laws, a large assortment of legal documents has survived. These describe people legal interactions as they were practiced daily. Among them we find: bills of sale, marriage contracts, lawsuits, court depositions, letters from creditors, and adoption contracts.¹⁹

The chronology of ancient legal materials may thus be presented as follows:

¹⁷ Frymer-Kensky, 210.

¹⁸ Frymer-Kensky, 210. She adds: "In fact, we probably should consider the Book of the Covenant in Exodus to be a document in this tradition."

¹⁹ Frymer-Kensky, 210.

- legal documents of individuals, families, palaces and temples in Sumeria, dating from the third millennium BCE,, written in Sumerian;
- fragmentary laws of King Urukagina of Lagash, dated from about 2380 BCE and written in Sumerian;
- the Code of Ur-Nammu by King Ur-Nammu, founder of the Third Dynasty of Ur in the twenty-first century BCE, and written in Sumerian;
- the Code of Lipit-Ishtar by Lipit of Isin, dating from about 2000 BCE, written in Sumerian;
- the Code of Bilalama of Eshnunna, dating from around 1925 BCE, and written in Akkadian;
- legal tablets from Mari and dated from the nineteenth-eighteenth century BCE in cuneiform Akkadian;
- legal tablets from Alalakh, dated from the eighteenth century BCE and written in cuneiform Akkadian;
- the Code of Hammurabi, attributed to King Hammurabi, founder of the Old Babylonian empire, dating from around 1728 BCE, and written in cuneiform Akkadian;
- legal tablets from Nuzu dated from the late fifteenth century BCE, written in cuneiform Akkadian;
- laws from the Hittites in Anatolia from the fifteenth century BCE, written in cuneiform Akkadian;
- the Middle Assyrian Laws dating from the fourteenth to the twelfth century BCE, written in cuneiform Akkadian.

- some legal tablets from Ugarit in cuneiform Akkadian and dating from the fourteenth-thirteenth century BCE²⁰

Although rich in various legal material, most of these compilations are fragmentary. Furthermore, they cannot, in the strict sense of the word, be defined as law codes which seek to be comprehensive. In the first instance, it is clear that they are not intended to be exhaustive. The Code of Hammurabi, for example, contains no laws pertaining to murder or the giving of loans even though evidence from contract tablets of the time indicate that these were dealt with according to a known legal procedure.²¹ Second, Mesopotamian legal collections are never cited as an authority in judgment, nor do any collections state that judges must refer to these laws when deciding cases. In fact, the Code of Hammurabi is the only compilation in which we may find any type of statement about the intended audience. In the epilogue we read:

*let any oppressed man who has a cause
come into the presence of the statue of me,
the king of justice,
and then read carefully my inscribed stele,
and give heed to my precious words,
and may my stele make the case clear to him;
may he understand his cause;
may he set his mind at ease!*²²

²⁰ Livingston, 173-174.

²¹ Van Houten, 26.

²² ANET, 178. See also Martha T. Roth. *Law Collections from Mesopotamia and Asia Minor*. 2nd ed. (Atlanta, GA: Scholar Press, 1995, 1997). Her translation of the same passage, p. 134, reads: "Let any wronged man who has a lawsuit come before the statue of me, the king of justice, and let him have my inscribed stele read aloud to him, thus may he hear my precious pronouncements and let my stele reveal the lawsuit for him; may he examine his case, may he calm his (troubled) heart, (and may he praise me)."

Since most members of society were illiterate, and would not have been allowed into the temple precinct where the stele was displayed, it is doubtful that the laws inscribed on this stele helped the laity.²³ Furthermore, as Lohfink has articulated quite well, even if a literate, oppressed person had managed to read the stele, they would have discovered that there was no laws to protect the oppressed inscribed on it.²⁴

Westbrook, for his part, has argued that Mesopotamian law and omen collections were compilations of precedents which were referred to by practitioners.²⁵ As evidence, he points to the discovery of Assyrian laws in a Gate House, the normal location of the court in the Ancient Near East. Moreover, the process of recopying laws over a period of centuries indicates that archaic language was retained, and that significant changes in laws were made. For Westbrook this process proves that the laws were being used and needed to be revised from time to time in order to remain current.²⁶ This, therefore, clearly shows that law collections were used as legal precedents in the adjudication of legal disputes at the gate.

So as to bring some order to the kinds of legal collections unearthed thus far, Van Houten proposes the following three categories:

²³ Shalom M. Paul. *Studies in the Book of the Covenant in the Light of Cuneiform and Biblical Law* (Leiden, The Netherlands: E.J. Brill, 1970): 22.

²⁴ This was emphasized by Norbert Lohfink in his address, 'The Option for the Poor: Views of an Old Testament Scholar', delivered at the Catholic Biblical Association Annual Meeting, 1990.

²⁵ Westbrook, *Studies* . . . , 251-256.

²⁶ Westbrook, *Studies* . . . , 256.

- Laws sandwiched between a prologue and an epilogue which proclaim the deeds and divine mandate of the king were part of a royal *apologia*.
- Laws preserved without the prologue and epilogue, when there is evidence that they were being recopied with changes and additions being made, and which were uncovered in a location at which legal disputes were settled, were functioning as a set of precedents which were referred to in the process of adjudication.
- Laws uncovered in scribal schools, and which show no signs of revision, are laws which had become canonical, or classical literature – part of the venerated tradition which was passed on unchanged.²⁷

Whatever may remain of a collection of laws, or that has been deciphered thus far, is of limited value to the particular subject under investigation. Yet what is available permits us to gain a better understanding of customs prevailing in that area of the world at a time preceding or contemporary to the biblical account.

B. Law codes and protection of the oppressed:

Protection of the widows, the orphans and the poor did not start within the spirit of Israelite prophetism. Rather, it seems to have been a common policy of the Ancient Near Eastern kings.²⁸ Such protection was seen as a virtue of gods, kings, and judges and was their prerogative.

²⁷Van Houten, 29-30.

²⁸G. Laneczowski, "Ägyptischer Prophetismus," *Zeitschrift Für Die Alttestamentliche Wissenschaft* 70 (1958): 38.

"It was a policy of virtue, a policy which proved the piety and virtue of a ruler."²⁹ However, as is manifested later in Israel's history, in times of decay the protection of widows, orphans and the poor was neglected and they were even sold as credit-slaves.³⁰ To protect the rights of these people and to obliterate abuses against them, laws and religious pressure were used as compulsory methods. This policy of protection of the weak is also found in the wisdom literature of the Ancient Near East, showing a close link between the style and contents of wisdom literature and the ancient legal codes. The function of the wisdom literature was didactic, its purpose being to instruct people on how to behave.³¹

The oldest example of such protection is found in the reform instituted by Urukagina, king of Lagash around 2400 BCE. He promulgated that mighty people were not allowed to treat the orphan and widow with injustice, articulating these stipulations as part of a treaty between the god Ningirsu and Urukagina.³² The same idea is present in the legal code of Ur-Nammu, dating from around 2050 BCE. In the prologue the protection of orphan, widow and the poor ("man of one shekel") is mentioned, but because the tablet is broken it is impossible to ascertain to which god the execution of justice is ascribed. What is interesting to observe, though, is that the idea of protection is placed in the prologue where

²⁹ F. Charles Fensham. "Widow, Orphan, and the Poor in Ancient Near Eastern Legal and Wisdom Literature" *Journal of Near Eastern Studies* 21 (1962): 129.

³⁰ See I. Mendelsohn, *Slavery in the Ancient Near East* (no place, no publisher, 1949), 14 ff., 19 ff., 23 ff; See also F.C. Fensham "A Few Aspects of Legal Practices in Samuel in Comparison with Legal Material from the Ancient Near East" *Studies in the Book of Samuel* (no place, no publisher, 1960): 19 ff.

³¹ Fensham, "Widow, Orphan, and the Poor . . .," 129.

³² Fensham, "Widow, Orphan, and the Poor . . .," 130.

the religious background and general policy of the king are stated.³³ Such an occurrence is also found in the prologue of the famous Code of Hammurabi, which dates from around 1700 BCE. There reference is made to justice executed by the king and to the fact that the strong are not allowed to oppress the weak so that the sun (Utu-Shamash, the god of justice) may rise over the people.

Let us now look more closely at the pertinent Ancient Near Eastern laws which deal with the care of widows.

II. The Code of Hammurabi

The purpose of the Code of Hammurabi (a compilation of the sixth king of the Old Babylonian (Amorite) Dynasty who ruled for 43 years, from 1728 to 1686)³⁴ is articulated in the prologue, where we read:

*. . . at that time Anum and Enlil named me
to promote the welfare of the people,
me, Hammurabi, the devout, god-fearing prince,
to cause justice to prevail in the land,
to destroy the wicked and the evil,
that the strong might not oppress the weak³⁵*

and again,

³³ Fensham, "Widow, Orphan, and the Poor . . .," 130.

³⁴ Theophile J. Meek, in ANET, 163; see also Roth, 71.

³⁵ ANET, 164. Roth's translation, 76, reads: "At that time, the gods Anu and Enlil, for the enhancement of the well-being of the people, named me by my name: Hammurabi, the pious prince, who venerates the gods, to make justice prevail in the land, to abolish the wicked and the evil, to prevent the strong from oppressing the weak, to rise like the sun-god Shamash over all humankind, to illuminate the land."

*When Marduk commissioned me to guide the people aright, to direct
the land
I established law and justice in the language of the land,
thereby promoting the welfare of the people.³⁶*

These statements seem to indicate that Hammurabi brought various laws of his empire together, had them translated into a common language, and made them a more or less consistent whole. These laws, therefore, represent both traditional material as well as laws which have been modified or added.³⁷ They became the standard for the application of justice for more than a millennium in the ancient world, as demonstrated by the numerous copies discovered throughout the region. However, these laws did not undergo any significant changes. This, to Westbrook, indicates that they had become canonical literature and were recopied in scribal schools only for their own sake.³⁸ According to him, they were no longer functioning as references for judges, since it is only when legal collections are being revised that they are applied in the courts.³⁹

We also read in the epilogue:

*I always governed them in peace;
I sheltered them in my wisdom.
In order that the strong might not oppress the weak,*

³⁶ ANET, 165. Roth's translation, 80, reads: "When the god Marduk commanded me to provide just ways for the people of the land (in order to attain) appropriate behavior, I established truth and justice as the declaration of the land, I enhanced the well-being of the people."

³⁷ Van Houten, 28.

³⁸ Westbrook, *Studies* . . . , 236.

³⁹ Westbrook, *Studies* . . . , 256.

that justice might be dealt the orphan (and) the widow.⁴⁰

What is significant is that these references are found in the prologue and epilogue to the laws. Nowhere in the case laws do we find specific laws regulating the protection of the widow, orphan and poor. What we have, therefore, are these statements made by the king in order to demonstrate that he has carried out his mandate of establishing justice.⁴¹

On the other hand, various laws seem to address the subject of the maintenance of widows, and a careful analysis of these laws needs to be made so as to better understand the customs prevailing and sanctioned at this time and in this area of the world.

A. CH §150.

The first law we will consider is §150:

If a man has bestowed a field, a plantation, a house or chattels on his wife (and) has executed a sealed tablet for her, after (the death of) her husband her sons shall not bring a claim (for it) against her; the mother shall give (the charge of) her estate to her son whom she loves. She shall not give (it) to another person(?).⁴²

In this law we find that if a husband has given land or other property to his wife while he was alive, and if that gift has been

⁴⁰ ANET, 178. Roth's translation, 133, reads: "I maintained them in peace, with my skillful wisdom I sheltered them. In order that the mighty not wrong the weak, to provide just ways for the waif and the widow."

⁴¹ Van Houten, 35.

⁴² This law and the ones following come from Godfrey Rolles Driver and John C. Miles. *The Babylonian Laws* (Oxford, England: The Clarendon Press, 1955-1960).

recorded on a sealed tablet, after his death her sons cannot make a claim against it. Further, she may "give," that is entrust, "her estate to her son whom she loves." In other words, the widow can have the usufruct of the land or other property given to her by her late husband; this land or other property, managed by one of her sons during her lifetime, will supply her with a certain revenue for her maintenance. In the same context it is interesting to note §178⁴³ which specifies that if the widow's brothers fail to maintain her with enough revenues or products, the management of the property can be taken from them. It may be assumed, although no proof of it is found in the laws, that this particular son would inherit that piece of property, or that while his mother was alive he could also have a share of the revenues, as long as she was provided for adequately.

The last clause of the law §150 is rather interesting. Does it mean that the woman shall not entrust the property in question to any other man than the son whom she loves? Although this interpretation may be the most literal, and makes good enough sense, Driver and Miles object to it on philological ground. They argue that if the signification of that clause is that

⁴³ §178 reads: "If (there is) a high-priestess, a priestess or an epicene whose father has bestowed a dowry on her and has written a tablet for her (but) has not granted her written authority in the tablet which he has written for her to give (the charge of) her estate to whom she pleases and has not conceded her full discretion, (then) after the father goes to his fate, her brothers shall take her field and her plantation (into their charge) and give her food, oil and clothing according to the capacity of her share and satisfy her. If her brothers do not give her food, oil and clothing according to the capacity of her share and do not satisfy her, she may give her field and plantation (in)to (the charge of) any cultivator who pleases her and her cultivator shall maintain her; she shall enjoy the field (and) the plantation (and) anything which her father gave her so long as she lives. She shall not sell (them and) she shall not use them to settle (the claim of) any other (person). Her inheritance belongs to her brothers."

she shall not entrust the property to a brother . . . the explanation of the clause may be found in §178, where a father has given a *seriktum* [marriage gift] (which included land) to a priestess but has not given her power to give (the management of) it where she will. In that case her brothers have the right to take charge of the property and manage it; but, if they fail to provide her with proper maintenance, she can take it from them and entrust it to a bailiff.⁴⁴

However, Driver and Miles are quick to point out that, since the widow in §178 is a priestess, her brothers are her natural heirs, while in §150 the natural heirs are her sons. It is possible, they extrapolate, that a woman's brothers may have claimed the right to manage her property during widowhood, especially if her sons were minors, and that possibly this law was promulgated so as to prevent such a claim. Most certainly there were abuses since all that was required was to provide for her maintenance and a property could, potentially, yield much more than that.⁴⁵

B. CH §171.

A second law pertinent to our study is §171, which reads:

Or, if the father in his lifetime does not state to the sons whom the slave-girl has borne him '(Ye are) my sons', after the father goes to his fate, the sons of the slave-girl shall not take shares in the property of the paternal estate with the sons of the first wife; the release of the slave-girl and her sons shall be granted, (and) the sons of the first wife shall make no

⁴⁴ Driver and Miles. *The Babylonian Laws*, 312-313.

⁴⁵ Driver and Miles. *The Babylonian Laws*, 313.

claim to the sons of the slave-girl for slavery. The first wife shall take her dowry and the settlement which her husband made her and assigned in writing to her on her tablet and may dwell in the dwelling-place of her husband; so long as she lives she shall have the usufruct (of this property). She shall not sell (it). Her estate belongs to her sons.

In this particular law we find that the wife, upon her husband's death "shall take" her dowry, which certainly suggests that prior to this event it was the property of, or at any rate in the possession of, her husband. However, she could not dispose of it; all she had was a life interest in it, for at her death that property, whatever it may have been, passed on to her sons. Driver and Miles point out that, technically, it had always been their property, even though subject to her life-interest.⁴⁶

C. CH §172.

Another law of interest to our study is §172. It states:

If her husband has not made her a settlement, they shall make good her dowry to her and she shall take a share like (that of) one heir from the property of her husband's house. If her sons persist in persecuting her to make her go out of the house, the judges shall determine the facts of her case and lay a penalty on the sons; that woman shall not go out of her husband's house. If that woman sets her face to go out, she shall surrender the settlement which her husband gave her to her sons; she shall take her dowry which she brought from her father's house, and a husband after her heart may marry her.

⁴⁶Driver and Miles. *The Babylonian Laws*, 266, n. 1.

Here we find that if a husband died without having made provision for his wife, she received her dowry and the courts were to award her the share of one heir in her husband's estate. Koschaker has argued that comparative law shows that the *nudunnûm* (bride-price or dowry) in course of time ceased to be paid to the bride's parents. Instead it went to the bride herself so as to be used by her for her maintenance during widowhood.⁴⁷ One document,⁴⁸ for example, mentions that a widow received a piece of land and one slave-girl as her "share" since she had no dowry which could be reverted to her. Upon her death her two surviving sons would divide the piece of land between them. In another document⁴⁹ we read of three sons claiming the "chattels of their father's house" from their mother because she had married again and, therefore, had no right to anything from her late husband's estate. These kinds of court actions were certainly sanctioned in the Code of Hammurabi §177 which states:

If a widow whose sons are infants sets her face to enter another (man's) house, she shall not enter without (the knowledge of) the judges. When she enters the other (man's) house, the judges shall determine what is the estate of her former husband's house and shall entrust her former husband's house to (the charge of) her latter husband and (of) that woman and shall make them execute a tablet; they shall keep the house and shall bring up the infants. They shall not sell (any) utensils; the buyer who buys (any) utensil of the widow's sons forfeits his money, (and) the property shall revert to its owners.

⁴⁷ Koschaker, cited by Drivers and Miles in *The Babylonian Laws*, 266-267.

⁴⁸ Identified as Kohler & Ungnad HG. 46R. 8-13 by Drivers and Miles in *The Babylonian Laws*, 266.

⁴⁹ Identified as Kohler & Ungnad HG. 718 by Drivers and Miles in *The Babylonian Laws*, 266.

We can also observe that in §172 the settlement made by the husband to his wife is distinct from the dowry, for if she had no dowry she received a share of her husband's estate. This settlement, unlike the gift of §150, was not a gift left to the absolute discretion of the husband but an institution belonging to marriage, "inasmuch as it was the regular practice for the husband to make such settlement on his wife and, if he did not, she was entitled to a share in his estate at his death."⁵⁰ Further, in §150 the sons may not make a claim against the gift which the husband has bestowed on his wife, presumably on the grounds that the father was wrongfully disposing of property which would normally come to them upon his death, whereas no such claim could be made in the case of a dowry, since a wife has either a right to it or a share in the estate upon her husband's death.⁵¹ Also, we may note that eventually, at the widow's death, the dowry passes to all her sons, while the gift which was made to her, in §150, could be given to a favorite son.

We also see that if the late husband had made a settlement to the widow, that settlement barred the widow's claim to a share as one heir in her husband's estate. The settlement mentioned in §172 must therefore be considered to be different from the gift of §150, for both §171 and §172 deal with the rights of a widow to her own property after her husband's death, while §150 is not concerned with this.⁵²

⁵⁰ Drivers and Miles, *The Babylonian Laws*, 267.

⁵¹ Drivers and Miles, *The Babylonian Laws*, 267.

⁵² Drivers and Miles, *The Babylonian Laws*, 269.

Furthermore, we find that the dowry is not mentioned in the sections dealing with divorce. This is interesting, and important, for a woman was not entitled to it until the death of her husband and, consequently, had no right to it if divorced. The dowry's purpose, it would appear, was to provide maintenance for the widow as long as she remained in her husband's house. If she was to leave his house, that is get remarried, she had to forfeit it.⁵³ If a wife survived her husband, she obtained the use and control of her dowry (which previously was administered and controlled by her husband) subject to the terms of the deed of gift.⁵⁴ Since the gift was to provide for her maintenance while she was a widow, if she remarried or divorced, her interest in the estate came to an end. Driver and Miles conclude that

the maker of a gift of this nature can and does give it only for her life or widowhood; he cannot wholly deprive his sons of their right to divide this and all his property. When, then, she is divorced or dies, they take it as heirs to their father or possibly *vivo quoque patre quodammodo domini existimantur*, namely as co-owners with their father, and taking it by survivorship.⁵⁵

When the father died, his estate was not necessarily divided at once. If the sons were minors, the estate was administered by their mother, and if she remarried, by her and her new husband.⁵⁶ However, when the sons attained their majority, then division of the estate took place, and it was at this time that a share was allotted to the mother, if she had no dowry or if she had not remarried.⁵⁷ We do not know if the

⁵³ Drivers and Miles, *The Babylonian Laws*, 270.

⁵⁴ In §150 the terms are that one of her sons, whom she loves, shall administer it for her.

⁵⁵ Drivers and Miles, *The Babylonian Laws*, 270.

⁵⁶ See CH §177.

⁵⁷ See CH §172.

sons had to wait for a division of the paternal estate until the youngest had attained his majority, or if the property was divided progressively as each son attained his majority.

After having considered the pertinent laws found in the Code of Hammurabi, we can conclude that the right of a widow seems to be limited to her dowry or to a share in her husband's estate if she has had no dowry. She had an interest in this share only as long as she lived, or until she remarried, or until she left her late husband's home, presumably to either take up residence with her own family or with another man, for the property was really vested upon her sons. It is, therefore, evident that the laws concerning the care of widows were more concerned about her economic well-being than anything else. Great care is given to ensure that the widow will either enjoy a share of her late husband's property or that she will get to use her own dowry, until she died. The purpose of these few laws is clearly to deal with economics, from within the confines of family relationships.

What is also important to note here is that the Code of Hammurabi deals exclusively with widows who have sons. It has no provision bearing on the levirate,⁵⁸ where preservation and perpetuation of the family was usually attained by means of adoption⁵⁹ or the legitimizing of children

⁵⁸ Godfrey Rolles Driver and John C. Miles. *The Assyrian Laws* (Germany: Scientia Verlag Aalen, 1935-1975): 245.

⁵⁹ CH §185 = *If a man has taken an infant in adoption (to be called) by his name and brings him up, that adopted child shall not be (re)claimed.*

CH §186 = *If the man has taken the infant in adoption (and), when he has taken it, it persists in searching for its father and its mother, that adopted child shall return to its father's house.*

CH §187 = *The (adopted) son of a chamberlain or the (adopted) son of an epicene shall not be (re)claimed.*

conceived with a slave-girl,⁶⁰ similar to the way Sarai gave Hagar to Abram (Gen. 16.1-16) and Rachel and Leah gave their maids to Jacob (Gen. 30.1-8). However, according to the Code of Hammurabi, the husband was not allowed to take a concubine if the slave-girl bore him a son,⁶¹ while in the case of Jacob, in particular, both Bilhah and Zilpah were to bear him more than one son each. Thus they were considered to be more like concubines than as exclusively surrogate mothers.

CH §188 = *If a craftsman has taken a son for bringing up (in his craft) and teaches his handicraft, he shall not be (re)claimed.*

CH §189 = *If he does not teach him his handicraft, that adopted child may return to his father's house.*

CH §190 = *If a man does not count the infant that he has taken in adoption and has brought up with his (other) sons, that adopted child shall return to its father's house.*

CH §191 = *If the man who has taken the infant in adoption to himself and has brought him up, has built him a house (and) afterwards gets sons and sets his face to expel the adopted child, that son shall not then go destitute; the father who has brought him up shall give him one-third of his inheritance out of his property when he goes; (but) he shall not give him any (portion) of field plantation or house.*

CH §192 = *If the (adopted) son of a chamberlain or the (adopted) son of an epicene states to the father who has brought him up or to the mother who has brought him up 'Thou art not my father' (or) 'Thou art not my mother', they shall cut out his tongue.*

CH §193 = *If the (adopted) son of a chamberlain or the (adopted) son of an epicene has discovered the house of his (natural) father and hated the father who has brought him up or the other who has brought him up and (goes) to his (natural) father's house, they shall pluck out his eyes.*

⁶⁰CH §170 = *If the first wife of a man has borne him sons and his slave-girl has borne him sons, (and) the father in his life-time states to the sons whom the slave-girl has borne him '(You are) my sons', he shall count them with the sons of the first wife. After the father goes to (his) fate, the sons of the first wife and the sons of the slave-girl shall take proportionate shares in the property of the paternal estate; an heir, (being) a son of the first wife, shall choose and take (the first share) at the division.*

⁶¹See CH §144 which reads: *If a man has married a priestess and that priestess has given a slave-girl to her husband and she has then brought sons into the world, (if) that man sets his face to marry a lay-sister, they shall not allow that man (to do this); he shall not marry a lay sister.*

And CH §145 says: *If the man has married a priestess and she has not provided him with sons and so he sets his face to marry a lay-sister, that man may marry a lay-sister (and) take her into his house; that lay-sister shall not then make herself equal to the priestess.*

III. The Hittite Laws

While some scholars argue that the laws of the Hittites do not seem to have had much influence on Old Testament laws, because their content is quite distinct and reflects a different traditional culture,⁶² some of the customs and practices preserved in their laws seem to indicate the contrary.

A. HL §193.

Only one law in the Hittite collection addresses the subject of widows. This law reads:

§193. If a man has a wife and the man dies, his brother shall take his wife, then his father shall take her. If also his father dies, his brother shall take his wife [and also] the son of his brother shall [take her]. (There shall be) no punishment.⁶³

B. HL §192.

Associated with §193, and closely connected to it, is §192 which states:

If the wife of a man dies, (and) [he takes her] sist[er] (there shall be) no punishment.

The Hittite law §193 lays down the rule of levirate marriage. As this occurrence is the first one found among the Ancient Near Eastern

⁶²Van Houten, 24.

⁶³This law, and the one following are taken from E. Neufeld. *Hittite Laws* (London, England: Luzac & Co. Ltd., 1951).

texts, aside from that which is found in the Bible, evidently some questions do arise as to its apparition and content. Why was it necessary to promulgate such a law? Were there problems within the family which prevented a widow from being maintained adequately? Was it a law which tried to by-pass the previous customs of a widow being able to have her dowry back or to have her share in the inheritance (as was the case in the Code of Hammurabi)? Or, was it a law which tried to redress a wrong, that is, provide for the sustenance of a widow? Or, again, was it a law which had been promulgated so as to permit the legitimacy of sexual relations between members of the same family with the widow of one of its members?

Neufeld, in analyzing this particular section, came to the conclusion that "the text does not employ any idiomatic description of sexual relation, but speaks directly of taking (*dai-*) into marriage."⁶⁴ If that is truly the case, we are then confronted with a law which lays down the rule in which a widow will be provided for.

By priority, the order of the persons under this obligation is the following sequence: the brother of the deceased, the father of the deceased, the paternal uncle of the deceased, and finally the paternal nephew of the deceased. Neufeld theorized that "as between brothers themselves it may be supposed that the duty fell upon the oldest in the first place."⁶⁵ However, contrary to the Code of Hammurabi, the Hittite Law makes no reference to the question of sons in the original marriage

⁶⁴E. Neufeld. *Hittite Laws*, 192.

⁶⁵E. Neufeld. *Hittite Laws*, 192.

of the deceased. In other words, the widow was to be taken by the nearest relative whether or not she had children who could provide for her. This obligation, it seems, was mandatory and, thus, did not provide for a way out. And, although Neufeld thinks that this rule was in force as long as the woman's age permitted her to give birth to children,⁶⁶ the text does not make this a stipulation for her being taken into marriage by the nearest relative of her late husband.

Further, although analyses of the similarities and dissimilarities of the levirate among the Hittites and other various peoples of that region have often been discussed,⁶⁷ these discussions have been made only in general terms. The complete absence of any information as to the inheritance of the deceased's estate, and the devolution and possible trusteeship to the estate for the offspring of the levirate marriage makes any comparison quite impossible. All we have here is a progressive acquisition right of the widow by the deceased husband's relatives.

Another important point to note is that it may almost certainly be said that as the paragraph is not included in the chapter on matrimonial rights, but in that dealing with sexual offenses, the sentiments it expresses were not in accordance with the general concept of morality. This supposition seems to be supported both by §192 and especially by the last clause of §193 which stipulates that no punishment will befall

⁶⁶E. Neufeld. *Hittite Laws*, 192.

⁶⁷See Price, "The So-called Levirate Marriage in Hittite and Assyrian Laws" in *Oriental Studies dedicated to Paul Haupt* (no place, no publisher, 1926): 268-271; Driver and Miles. *The Assyrian Laws*, 240; E. Neufeld, *Ancient Hebrew Marriage Laws* (London, England: Longmans, Green & Co., 1944): 35-36, 52-55; J. Pedersen, *Israel*, vols. I-II, reprint (London, England: Oxford University press, 1926): 547-548; Van Praag, *Droit Matrimonial Assyro-Babylonian* (1945), 108, n. 4.

the one who will take the widow of his near relative. Such a statement makes one wonder if this action was punishable, prior to the formulation of this law, because the action would have seemed improper (similar to incest), or if widows were merely left unattended, that is, with no means to sustain themselves, because no provision had been made for such a support. This law, therefore, may have tried to rectify a wrong toward widows who may have had no economic recourse.

In either case, all of this is only speculation. All we do have for certain is a progressive list of people who could take in the widow of a deceased relative. And, since no mention is made of children (whether boys or girls) born into the first marriage, nor of any dowry nor share in the inheritance of the deceased, we may confidently assume that these issues were not the main concern of this law, and that its primary purpose was simply to see that the widow would be welcomed under the roof of a near kinsman. No imposition is made on the one taking her to produce an heir for the dead husband. Once again, then, the economic well-being of the widow within the confines of family relationships seems to be the concern of these two laws.

IV. The Middle Assyrian Laws

This collection of laws, preserved on clay tablets, dates from the time of Tiglath-Pileser I in the 12th century BCE, but its origins may reach back to the 15th century BCE.⁶⁸ In it, various stipulations are presented which deal with the widow of a deceased man.

A. MAL §25.

This law states that,

If a woman is still dwelling in her father's house and her husband is dead, (and) her husband's brothers have made no division (of the inheritance) and she has no son, her husband's brothers, having made no division, shall take any ornaments which her husband has bestowed on her (and which) are still in her possession. They shall have what remains passed before the gods (and) make a (formal) claim (and) take (what is theirs). They shall not be seized for (trial by ordeal by) the river-goddess or the oath.⁶⁹

At first sight, this law appears to be unjust since what apparently belongs to the woman, having come as a gift from her deceased husband, is being appropriated and divided among her husband's brothers. But what this law seems to be describing is not so much a marriage which has been consummated (although it could have been) but, rather, the case of a betrothed couple, who would have been considered as married, or that of an inchoate marriage, that is, where the wife remained in her father's

⁶⁸ Meek, in ANET, 180.

⁶⁹ This law and the ones following come from Driver and Miles. *The Assyrian Laws*, 397-411.

house. There are two conditional clauses present at the beginning of the formulation which are important for they give us a clue as to why the husband's brothers can make a claim on their dead brother's gifts to his wife without incurring any penalty.

The first one speaks of the woman still being in her father's house. This certainly indicates that her needs will be met and that she is not dependent on these ornaments, either to keep or to sell, for her sustenance. The second specifies that she had to have no sons, indicating that, although the marriage may have been consummated, no children were produced which could have a claim on the gift which the late husband had bestowed upon his wife, and even less on the inheritance of the deceased.

The normal course of marriage was for a woman to leave the family of her birth and enter her husband's home. However, as is evidenced here, it is very probable that in the Middle Assyrian period there was another possibility since these Assyrian laws make provision for a situation in which the wife remained in her father's house. It seems clear from other laws that although the wife remained in her father's home (this might be only temporary) the ultimate authority over the woman herself, and over the property which went with her, lay with the family into which she had married and not with her own father.⁷⁰

⁷⁰H.W.F. Saggs. *The Might That Was Assyria* (London, England: Sidgwick & Jackson, 1984): 141.

B. MAL §26.

Also pertinent to our discussion is §26, which states:

If a woman is still dwelling in her father's house and her husband is dead, (then,) if there are sons of her husband, they shall take any ornaments which her husband has bestowed on her; (but) if there are no sons of her husband, she indeed shall take (them).

This particular law, closely related to the preceding one, presents the case of a wife still dwelling in her father's house, but who had sons by her late husband. This certainly describes what used to be an inchoate marriage but no provision is made for her sustenance, certainly because she is living in her father's house. This presupposes that he is the one who will take care of her. The ornaments referred to here, as in the previous law, are the betrothal gifts which the late husband bestowed upon his promised bride and which she kept to do with as she pleased. Yet, these gifts, if she has sons, would eventually be theirs. If no sons issued from that union, she could keep these gifts. The difference between this and the preceding law is that the brothers of the deceased husband do not make a claim against these gifts. Apparently, here, the brothers may have already divided the property of the deceased and, therefore, cannot also acquire what has been given to the wife.

C. MAL §30.

Another law, §30, also pertains to our subject. It reads:

If a father has conveyed (or) brought the (customary) gift to the house of his son's father-in-law (and) the woman has not been given to his son, and another of his sons, whose wife is dwelling in her father's house, has died, he shall give his dead son's wife to be spouse to his other son to whose father-in-law's house he has brought (the gift). If the owner of the girl, who has accepted the present, is not willing to give his daughter, the father who has brought the present, if he pleases, may take his daughter-in-law (and) give her to his son; or, if he pleases, he may surely take (back) so much as he has brought, lead, silver, gold, (or other things) not being edible, in full amount; he shall not claim the things which are edible.

At first sight §30 appears to say that if the bride, who has been acquired by a father for his son by bringing betrothal gifts to her father, has not been given or delivered to her future husband, when one of his married brothers dies, his father may give his dead brother's wife to the son for whom he has acquired the undelivered bride. It adds that if, however, the bride's father is unwilling to give his daughter in marriage to her original intended bridegroom, who now has or may not have another wife, the bridegroom's father may nevertheless take her and give her to that same son. Otherwise, the father of the dead son (and promised husband) may require her father to restore the gifts which he has received for his daughter.

Such an interpretation of the section, argue Driver and Miles, is scarcely possible. Their analysis of the pertinent documents concludes that it would be "inconceivable that a system of law so advanced as that of Assyria could possibly insist on the enforcement of a promise to marry when the circumstances of the case were altered in the most

material point, i.e., the position of the wife who would become a mere second instead of first wife."⁷¹

This transaction, which seems to be more an economical one than anything else, resembles that in which a father acquires another man's daughter for the purpose of a daughter-in-law (that is for the bearing of children), in order to marry her to a specific son or, if that son dies, to another of his sons. If this is the case, the phrase "the woman has not been given to his son" remains unclear. However, since the bridegroom's father has brought gifts and designated the son whose bride the girl is intended to become, and since the father-in-law has accepted the gifts, a contract has been made by which she becomes his inchoate wife.⁷² The explanation of that phrase, therefore, could be that the girl has not yet been given to the bridegroom for the purpose of completing the marriage, connoting the idea that the marriage has not yet been consummated and, consequently, that the inchoate marriage has come to an end. Since she is not really married at all, she is at the disposal of her father-in-law to give to whichever of his sons he likes.⁷³ Furthermore, it is to be remarked that while the son originally designated as the bridegroom may never obtain the bride intended for him as his wife, he receives the wife of his dead brother in her stead or perhaps along with her.

Of great interest is the clause dealing with the second woman, which reads "he shall give his dead son's wife to be spouse to his other

⁷¹Driver and Miles, *The Assyrian Laws*, 175.

⁷²Driver and Miles, *The Assyrian Laws*, 175.

⁷³Driver and Miles, *The Assyrian Laws*, 176.

son . . ." because it has been thought to contain an instance of the custom of the levirate. Primarily, it is to be noticed that the father who has acquired a bride for his son has the right to give a dead son's wife, even though she is residing in her father's house, in marriage to the son who was supposed to marry another woman. Driver and Miles, commenting on this particular aspect of the law said that "it may therefore be inferred that this marriage too was inchoate or imperfect."⁷⁴ Or may be she just returned home after her husband died.

So, although some would argue that here is an instance of the levirate, this does not really seem to be the case as there is nothing showing a legal duty binding on the second son to marry the widow, apart from the duty to fulfill his father's wish.⁷⁵ It could also be that this law was promulgated for economic reasons, as the father of the dead man would have had to send the widow back with her dowry, something which may have lowered his own economic status.

D. MAL §33.

Law §33 is another law which deals with the care of widows. There we read:

[If] a woman is still dwelling in her father's house (and) her husband is dead and [she] has sons, [she shall dwell in a] house [belonging to them where she chooses. If] she has no [son, her father-in-law shall give her] to whichever [of his sons] he likes . . . or, if he pleases, he shall give her as a spouse to her father-in-law. If her husband and her father-in-law are

⁷⁴ Driver and Miles, *The Assyrian Laws*, 177.

⁷⁵ Driver and Miles, *The Assyrian Laws*, 247.

[indeed] dead and she has no son, she becomes (in law) a widow; she shall go whither she pleases.

The term "widow," in this particular law, is well defined. This word, *almattu* in Assyrian, does not simply describe a widow but, rather, a woman who is left without the protection of a husband or father-in-law and who has no sons capable of supplying their house as a place of refuge, and who therefore can go wherever she pleases, that is, get re-married to whomever she wants.⁷⁶

According to this law, it would seem that under certain circumstances, which cannot be ascertained because the original text is badly mutilated, a woman, who is described in the first part of the section as having sons, and who must therefore have been the full wife of the deceased man, may, after his death, be given in marriage to her father-in-law or another of his sons. However, the lines preceding that statement are missing in the original text, so that "it is impossible to be certain that they did not deal with the case in which she had no sons or with that in which she was inchoately married."⁷⁷ In any of these two possibilities the woman is presumed to associate herself to a household which could supply her with basic necessities.

E. MAL §34.

§34 is another law pertinent to our subject. It states:

⁷⁶ Driver and Miles, *The Babylonian Laws*, 358.

⁷⁷ Driver and Miles, *The Assyrian Laws*, 247.

If a man cohabits with a widow without having drawn up a marriage-contract (and) she dwells two years in his house, she (becomes) a wife; she shall not go forth.

This law, that of a widow who associated herself with a man but had no marriage contract, seems to present the application of the preceding law. The lack of a marriage contract seems to demonstrate this kind of widowed situation and certainly indicates that she was not under the control of her father, father-in-law or brother-in-law, and that, therefore, she could go wherever she wanted since there was nobody able to set things in place for her protection and sustenance. This law, however, appears to take care of that for, after residing for two years with a man, she would be considered as his wife and, therefore, would benefit from all that would pertain to the rights of a full wife.⁷⁸

F. MAL §43.

Also relevant to our investigation is §43, where we read:

If the man has either poured oil on the (lady's) head or brought wedding-gifts (?) (and) the son to whom he has assigned the wife has either died or disappeared, he may give her to whichever he pleases of the rest of his sons from the eldest to the youngest who is 10 years old. If the father is dead and the son to whom he assigned the wife is dead but the dead son has a son who is 10 years old, he shall marry her; but if the grandsons are younger than 10 years old, the girl's father, if he pleases, shall give his daughter (to one of them) or, if he pleases, shall make a return (of the gifts) on equal terms. If there is no son, he shall surely give (back) so much as he has received,

⁷⁸ Saggs, 140 and 142-143.

precious stones and any (other) things not being edible, in full amount but shall not give back what is edible.

This law describes the case of a father who has acquired a girl as a bride for a son who either dies or disappears before the completion of the marriage. The father then, if still alive, may give the intended bride to another of his sons. If the father is dead, the sons of the dead intended groom have the possibility to marry the woman who had been acquired for their father. If none of these sons is of age (10 years old) to marry, the father of the intended bride may, if he wishes, wait until one of them reaches the appropriate age of 10, or may annul the contract by returning the gifts he has received.

At first glance, it would appear that this law presents a clear case of the levirate. However, no well-defined duty or right of a brother to marry his deceased brother's bride is presented here. What seems to be evident is that a transaction has been made between two men, involving the son and the daughter of each, and that efforts are being made so as to fulfill the obligations of the contract. When all avenues have been explored and there is no recourse, then, and only then, is the father of the girl forced to return the gifts which had been acquired during that transaction.

While the rules respecting the devolution of a bride are set out quite clearly in §43, apparently the rights of the father-in-law extended only until she had been given once in marriage. Driver and Miles state of §43 that "the transaction is not levirate at all and is applicable not to a childless widow but to a woman who may be described

rather as imperfectly married than betrothed."⁷⁹ Yet, certain elements pertinent to the levirate seem to be present in MAL §43 and compare relatively well to the biblical accounts, although the differences are greater than the similarities. For example, in the story of Tamar (Gen. 38) it is said that Judah gave Tamar, the wife of his son Er, to Onan, the brother of Er; however, what follows makes it quite certain that Onan had a duty to perform toward Tamar, quite apart from the duty to obey his father, for God slew him because he wasted his seed.

Various alternatives are presented in MAL §43. The first paragraph is clear, for it states that a father who has acquired a bride for his son who then dies or disappears, retains the right to give her to any other of his sons who has reached the age of ten. The second paragraph, on the other hand, is full of difficulties. Subdivided into two clauses, this passage presents the situations where first the father who has acquired the future bride has died, as has the son for whom the bride was intended, but the dead son has left sons not less than ten years old, by another wife. Under these circumstances, one of these sons has the right to take the bride. However, in the second situation, if none of these sons is ten years old, the father of the bride has now a choice. In other words, and very interestingly, the prerogative passes from the family of the groom to that of the bride. In the first instance, the father of the bride, if he so desires, may give his daughter to one of these under-aged sons in a child-type marriage, awaiting until the prescribed age of ten is reached.⁸⁰ Or, he may

⁷⁹ Driver and Miles, *The Assyrian Laws*, 177.

⁸⁰ See the story of Tamar who had to wait (in vain!) for Judah's under-aged son, Shelah, until he came of age (Gen. 38.11 and 26).

rescind the contract by returning what has been given to him in the first place, with the exception of what was edible.

In analyzing this particular law, Driver and Miles point to some things which are worth notice.⁸¹ First, this law shows that a father sometimes acquired a girl for a son who was already old enough to be married and to have begotten sons. This certainly indicates to what extent there was considerable control of the family structure in Assyria. Second, the statement that the grandson (over 10) "shall marry" the girl suggests that he is completing an inchoate marriage and may explain why no one is said to give the girl to him. Third, "this paragraph seems to some extent to illustrate the custom which has been found in other races whereby sons inherit their father's wives with the exception of their own mothers."⁸²

G. MAL §46.

The law of MAL §46 illustrates quite well the point developed above. It reads:

If a woman whose husband is dead does not go forth from her house on her husband's death, (and) if her husband has assigned her nothing in writing, she shall dwell in a house belonging to her sons where she chooses; her husband's sons shall provide her with food; they shall enter into a covenant for her for (the provision of) her food and her drink as (for) a bride whom they love. If she is a second (wife and) she has no sons, she shall dwell with one (of her husband's sons and) they shall provide her with food in common; if she has sons (and) the sons of the

⁸¹ Driver and Miles, *The Assyrian Laws*, 182.

⁸² Driver and Miles, *The Assyrian Laws*, 182.

former (wife) do not agree to provide her with food, she shall dwell in a house belonging to her own sons where she chooses, (and) her own sons too shall provide her with food and she shall do their work. But if indeed among her sons (there is one) who has taken her (as his spouse), he [who takes] her (as his spouse) [shall] surely [provide her with food and her (own) sons] shall [not] provide her with food.

This particular law presents the case of a widow who has sons, and the responsibilities these sons have toward her for her sustenance, or, if she has no sons, and if she is a second wife, the sons issued of the first marriage are to take care of her. The point to note here is that this is certainly a completed marriage since mention is made that she may have sons, or that she could be a second wife. No obligation whatever is made for her to marry, or be married to, a brother, father or other relative of her dead husband. Unless one of the sons has taken her as spouse, the obligation to maintain her falls squarely on her sons or the sons issued of a first marriage by her husband. We then can see that, since provision has been made for her maintenance, no levirate obligation is extended to anyone.

It is conceivable to assume that the Assyrians may have recognized a custom analogous to the Hebrew levirate, however, what we find is that the provisions made in the Middle Assyrian Laws are seemingly applicable only when the man dies before the consummation of the marriage. There also seems to be no constraint on the brother, or any other relative, of the dead husband to take his widow, as appears to be the case in the Hebrew custom, inasmuch as MAL §43 says only that the father of the dead groom may give the dead man's bride to one of his brothers. The

constraint, it would seem, is much more on the father of the girl, and the girl herself, although the deceased man's father has acquired a right to give her to any of his sons. None of these laws contain a certain instance in which the girl who is given to her brother-in-law has actually been the full wife of the dead husband.⁸³ We can then say that there is no real evidence in these laws in favor of the existence of the Hebrew type of levirate in which inchoate marriages were not understood to be the base for the application of the levirate.⁸⁴

The only two cases which could possibly recall the custom of the levirate are that of MAL §30, where a dead son's wife is given by his father to another son, and that in MAL §33, where she is given to her father-in-law or to any of his sons he likes. However, as Driver and Miles have pointed out, "both these cases can be explained as illustrating the contract *ana kallatuti*."⁸⁵

We should certainly add that several of the passages under consideration are opposed, inferentially, to the existence of the levirate. Already mentioned is the case found in MAL §33 where a widow is free to marry whom she will. A childless widow could not do this by Hebrew law, especially if she had either a brother-in-law⁸⁶ or a male

⁸³ Driver and Miles, *The Assyrian Laws*, 247.

⁸⁴ This will be further explored and developed in a later section of this research.

⁸⁵ Driver and Miles, *The Assyrian Laws*, 248. The term *ana kallatuti* refers to a certain type of contract whereby a father is entitled, when he has acquired another man's daughter as a bride for a specific son, even though there may have been no special term to this effect in the contract, to give her to another of his sons if other provision has in the meanwhile been made for the original bridegroom, and whereby he can enforce this right against the wish of the bride's father, whatever may be the ground of his objection.

⁸⁶ See Gen. 38; Deut. 25.5-10.

kinsman of her husband.⁸⁷ In MAL §25, we find that such a custom is not even considered, for there the wife of the dead brother has no son, nor father-in-law, and her brothers-in-law are said not to have divided his estate. Although these brothers-in-law may have a legitimate claim to the betrothal gifts which the dead husband has bestowed upon his bride, there is no suggestion that they have a right or a duty to marry her.⁸⁸ Finally, in MAL §46 a widow, if she has sons, may be married by one of her step-sons, but there is no mention of her brother-in-law or of her father-in-law. The evidence, therefore, is clearly not in favor of the recognition of the Hebrew levirate by the Assyrians. What is evident, though, is that provision for the sustenance of the widow is taken for granted throughout these laws.

According to these laws certain conditions must exist before a woman is called a true widow (i.e., an *almattu*), namely both her husband and father-in-law must be deceased, and there must be no son to provide for the widowed mother. From MAL §§30 and 43 it seems quite clear that a form of levirate existed in Assyria. MAL §43 makes provision for an alternate husband, from among the other sons, in the case of the deaths of both future father-in-law and betrothed man. If the betrothed man was survived by a son of at least ten years of age, that son could be given to the woman to marry. However, for the woman of MAL §33 none of these options appear possible. In the circumstances in which she finds herself, without husband, son, or father-in-law, and although she resides in her father's house, responsibility for her well-being does

⁸⁷ See the story of Ruth.

⁸⁸ Driver and Miles, *The Assyrian Laws*, 248.

not revert to her paternal family.⁸⁹ "As stated by the law, either there is a male within the husband's family, namely son or father-in-law, to take over her maintenance, or she is an *almattu*."⁹⁰

H. MAL §45.

MAL §45, for its part, brings a little twist to the care of widows. This law is concerned with the wife of a prisoner of war. Here another noteworthy aspect of the *almattu* is discovered. In this law we find that, after the woman has waited two years for the return of her missing husband, "she may go to live with the husband of her choice, (and) they shall write a tablet for her as a widow." It seems that once a woman was officially declared or considered a true widow (an *almattu*), she was given, or could apply for, a document that stated her position as an *almattu*. "Presumably she would need such a document to give her access to a world that normally would be mediated for her through the authority of some male."⁹¹

We can then conclude that a true widow, an *almattu*, is a woman without males who are responsible for supporting her. We can also conclude that, in the Middle Assyrian Laws, provisions were made to care for widows. While these laws may seem somewhat circumvolved, they do ensure that the widow's well-being, within the confines of family relationships, would be adequate and proper.

⁸⁹ See Driver and Miles, *Assyrian Laws*, 217-218.

⁹⁰ Paula S. Hiebert. "'Whence Shall Help Come to Me?': The Biblical Widow" in *Gender and Difference in Ancient Israel*. Peggy L. Day, ed. (Minneapolis, MN: Fortress Press, 1989): 128.

⁹¹ Hiebert, 128.

V. Egyptian Texts

The reason the Egyptians have left us little legal literature before the Persian period can be traced to their understanding of who the pharaoh was. The customary law was the word of the pharaoh at any particular time. Since the pharaoh was the human form of the sun-god, Re, legal decisions of the past had little meaning, at least officially. Hence written legal documents were of little value. The result was an authoritarian government with no check on the pharaoh's declarations, for he was not accountable to any higher power, not even to the gods.⁹²

Most scholars hold that Old Testament law does not seem to have been influenced by Egyptian legal practice,⁹³ and that Egyptian law is not part of the Mesopotamian tradition.⁹⁴ In fact, no body of laws analogous to the law collections of Mesopotamia or those in the Old Testament has been preserved in Egypt. Wilson has demonstrated quite well that there are no textual references to laws, nor accounts of law-giving by the king or an official until the tradition of King Bocchoris, around 700 BCE.⁹⁵ Since the pharaoh was believed to be divine, law proceeded from his mouth, making the codification of law neither necessary nor proper. Furthermore, because each new pharaoh was a new

⁹² Livingston, 172.

⁹³ Hans Jochen Boecker, *Law and the Administration of Justice in the Old Testament and Ancient East*, transl. J. Moiser (Minneapolis, MN: Augsburg Pub. House, 1980): 17.

⁹⁴ Westbrook, *Studies in Biblical and Cuneiform Law*, 1, n. 1.

⁹⁵ John A. Wilson, "Authority and Law in Ancient Egypt," *Journal of the American Oriental Society Suppl.* 17 (1954): 5.

god, it would not be fitting for him to be heir to a standing tradition outside of himself.⁹⁶

However, we are not totally ignorant of the legal practices among the Egyptians. We are somewhat acquainted with a few of their laws, and the superiority of their legal system has always been acknowledged as the cause of the duration of an empire "which lasted with the same form of government for a much longer period than the generality of ancient states."⁹⁷ Thus, beside their right of enacting laws, and of superintending all affairs of religion, and of the state, the pharaohs administered justice to their subjects. They were assisted by the advice of the most able and distinguished members of the priestly order. The pharaoh's edicts appear to have been issued in the form of a *firmán*, or written order.⁹⁸

Those who held the office of judges decided ordinary cases. The care with which persons were elected to this office is a proof of the ancient Egyptians' regard for the welfare of the community, and of their earnest endeavors to promote the ends of justice. Only the most upright and learned individuals were considered for such a position. In order to make the office more select, and to obtain persons of known character, only ten men were chosen from each of their three most important cities--Thebes, Memphis and Heliopolis. According to the first century Greek historian Diodorus Siculus, this council of judges was by no means

⁹⁶Wilson, 7. See also his *The Culture of Ancient Egypt* (Chicago, IL: The University of Chicago Press, 1951): 49.

⁹⁷J. Gardner Wilkinson. *The Ancient Egyptians: Their Life and Customs*. vol. 2 (London, England: Random House, 1996): 202.

⁹⁸Wilkinson, 203.

inferior to either the Areophagites of Athena, or to the senate of Lacedæmon.⁹⁹ These thirty individuals elected the most distinguished among them to be president, with the title of arch-judge, who then was replaced by another judge from his own city to complete the number of thirty. These judges were well remunerated by the pharaoh in order that "possessing of sufficiency for their maintenance and other necessary expenses, they might be above the reach of temptation, and be inaccessible to bribes; for it was considered of primary importance that all judicial proceedings should be regulated with the most scrupulous exactitude."¹⁰⁰

The first principle upon which justice was based was that, should offenders be discovered and then punished, those who had been wronged should be benefited by the interposition of laws. More importantly, though, the spirit of the Egyptian laws was not merely to hold out the distant prospect of rewards and punishments, nor simply to threaten the future vengeance of the gods, but to apply the more persuasive stimulus of present retribution.¹⁰¹

Care was taken for justice to be administered according to the real merits of the case, with no favor or respect of persons being permitted. To this, another important regulation was adopted: justice was to be gratuitously administered and was to be accessible to both the rich and the poor. It is thus evident that the very spirit of Egyptian laws was

⁹⁹Diodorus Siculus. *Library of History*. Loeb Classical Library. vol. 1 (New York, NY: 1933): 142.

¹⁰⁰Wilkinson, 203.

¹⁰¹Diodorus, 144.

to give protection and assistance to the oppressed, and everything that tended to promote an unbiased judgment was peculiarly commended by the Egyptian sages.¹⁰²

Upon having put the emblem of Truth around his neck, the arch-judge would commence a trial, in the presence of the thirty other judges. Wilkinson mentions that "the eight volumes which contained the laws of the Egyptians were placed close to him, in order to guide his decision, or to enable him to solve a difficult question, by reference to that code, to former precedents, or to the opinion of some learned predecessor."¹⁰³ However, these laws have never been found as yet.

Thus it is that we do not have any legal document, written or otherwise, pertaining to the care of widows in Egypt. We may presume that customs somewhat similar to those practiced in the rest of the Mediterranean basin were in operation, but no evidence whatever has been found to support or deny this.

However, if we turn our attention to the existing material, a few interesting things show up. Similar to the practice that was in Mesopotamia, as has already been demonstrated in our analysis of the

¹⁰²Wilkinson, 204. He adds a further interesting comment, 205: "When a case was brought for trial, it was customary for the arch-judge to put a golden chain round his neck, to which was suspended a small figure of Truth, ornamented with precious stones. This was, in fact, a representation of the goddess who was worshipped under the double character of Truth and Justice, and whose name, *Thmei*, appears to have been the origin of the Hebrew *Thummim*--a word, according to the Septuagint translation, implying "truth," and bearing a further analogy in its plural termination. And what makes it more remarkable, is that the chief priest of the Jews, who, before the election of a king, was also the judge of the nation, was alone entitled to wear this honorary badge; and the *Thummim*, like the Egyptian figure, was studded with precious stones of various colors."

¹⁰³Wilkinson, 206.

Code of Hammurabi, documents indicate that the protection of the weak was also an ideal of Egyptian kings¹⁰⁴ and nomarchs.¹⁰⁵ One of these nomarchs, who lived at the beginning of the 12th Dynasty and whose name was Ameny, boasted that he ruled his province with justice, respecting the poor man's daughter and the widow.¹⁰⁶

A. The instruction of the vizier Ptah-Hotep:

The Egyptians delighted in compilations of wise sayings. These were considered as directives for a successful life, and this is what, to them, was considered "wisdom."¹⁰⁷ Indeed their "wisdom" was proverbial, and was held in such consideration by other nations, that we find it taken by the Israelites as the standard to which superior learning in their own country was willingly compared.¹⁰⁸ We should not forget either that, according to Acts 7.22, Moses had prepared himself for the duties of a legislator by becoming versed "in all the wisdom of the Egyptians."¹⁰⁹

One the earliest compilations of Egyptian wisdom sayings is attributed to Ptah-Hotep, vizier of King Izezi of the Fifth Dynasty (about 2450 BCE). In this collection of instructions, Ptah-Hotep is

¹⁰⁴ François Daumas. *La civilisation de l'Égypte pharaonique* (Paris, France: Arthaud, 1965): 413.

¹⁰⁵ These are rulers of a district.

¹⁰⁶ Fensham, "Widow, Orphan, and the Poor . . .," 132.

¹⁰⁷ Wilson, in ANET, 412.

¹⁰⁸ See, for example, 1 Kings 4.30, which reads: "And Solomon's wisdom surpassed the wisdom of all the sons of the east and all the wisdom of Egypt."

¹⁰⁹ The Greek text reads: *καὶ ἐπαιδεύθη Μωϋσῆς πάση σοφίᾳ Αἰγυπτίων*, which is rendered by the King James Version and the New International Version as "And Moses was learned in all the wisdom of the Egyptians," while the New American Standard Bible has "And Moses was educated in all the learning of the Egyptians."

instructing his own son and designated successor on the actions and attitudes of a successful official of the state.¹¹⁰

One such instruction reads:

If thou art a leader commanding the affairs of the multitude, seek out for thyself every beneficial deed, until it may be that thy (own) affairs are without wrong, Justice is great, and its appropriateness is lasting; it has not been disturbed since the time of him who passes over its laws. It is the (right) path before him who knows nothing. Wrongdoing has never brought its undertaking into port. (it may be that) it is fraud that gains riches, (but) the strength of justice is that it lasts, and a man may say: "it is the property of my father."¹¹¹

It is quite evident that justice is presented as the duty of someone who is aspiring to greatness.

Another such saying is found a little further, where Ptah-Hotep instructs his son on how he is to act on matter of dispute over inheritance. It reads:

Do not be covetous at a division. Do not be greedy, unless (it be) for thy (own portion). Do not be covetous against thy (own) kindred. Greater is the respect for the mild than (for) the strong. He is a mean person who exposes his kinfolk; he is empty of the fruit of conversation. It is (only) a little of that for which one is covetous that turns a calm man into a contentious man.

¹¹⁰Wilson, in ANET, 412.

¹¹¹ANET, 412.

Sadly, though, Ptah-Hotep's instructions do not include anything about the care of the poor, widows or orphans. It centers, rather, on the value of being honorable, in a society which, apparently, had difficulties in that regard.

B. Instruction for King Meri-Ka-Re:

Another good example is preserved for us in the Instruction for King Meri-Ka-Re, dating from the 22nd century BCE.¹¹² Here the conduct of the king toward his people is prescribed. One of the maxims indicates that, if the king desires long life on earth, he must not oppress the widow or annex the property which someone has inherited from his father. The text reads:

*Do justice whilst thou endurest upon earth. Quiet the weeper; do not oppress the widow; supplant no man in the property of his father; and impair no officials at their post. Be on thy guard against punishing wrongfully.*¹¹³

When looking at the occurrence of this ideal and policy in the wisdom literature, it seems evident that the goal of defending the rights of the weak, widows, and orphans flourished in times of decay or at the beginning of a new period. Thus we have ample evidence of this policy at the end of the First Intermediate Period and the beginning of the Middle Kingdom (around 2000 BCE).¹¹⁴ For example, in the didactic discourse of the Eloquent Peasant, the peasant says to Rensi, the chief

¹¹²ANET, 414.

¹¹³Aksel Volten, "Zwei altägyptische politische Schriften," *Analecta Aegyptiaca* IV (1945): 22-23; ANET, 415; *Documents from Old Testament Times*. D. Winton Thomas, ed. (New York, NY: Harper and Row, Publishers, 1958): 155-161.

¹¹⁴Fensham, "Widow, Orphan, and the Poor . . .," 132.

steward: "Because thou art the father of the orphan, the husband of the widow . . ." ¹¹⁵ This statement by the peasant is very significant, because a married woman, after her husband's death, had no legal personality, as was also the case with minor orphans. Thus, the duty of the king or nomarch was to protect their rights in the same way as the father of the family should have done. ¹¹⁶

C. Instruction of King Amen-Em-Het:

Another text which originated not long after this is the Instruction of King Amen-Em-Het (first pharaoh of the 12th Dynasty who died in 1960 BCE) offered to his son and successor, Sen-Usert I. ¹¹⁷ In this document, the acts of the king are enumerated. One of these is charity to the poor and the elevation of minors. ¹¹⁸ When we take into consideration the confusion and abuse of the general rights of the people during the First Intermediate Period, emphasis on this policy and ideal is quite understandable. It seems that in bad times the weak were unprotected and the widow and the orphan were denied their rights. ¹¹⁹

Great pharaohs stepped in during the 11th and 12th Dynasties and, interestingly, widows, orphans and the poor were not mentioned again in wisdom literature until the 21st Dynasty, around 1000 BCE. While it is true that during the Second Intermediate and Hyksos Periods chaos was

¹¹⁵Wilson, in ANET, 408.

¹¹⁶Fensham, "Widow, Orphan, and the Poor . . .," 132.

¹¹⁷ANET, 418.

¹¹⁸The text reads: "I gave to the destitute and brought up the orphan."

¹¹⁹The following text may illustrate the point: "A man smites his brother, his mother's son. Men sit in the bushes until the benighted traveller comes, in order to plunder his load. . . . He who had no yoke of oxen is now possessor of a herd," in Fensham, "Widow, Orphan, and the Poor . . .," 133.

present, a very important difference is to be noted: this chaos was not instigated by social revolution as in the First Intermediate Period, but came mainly from the outside.¹²⁰

In another document,¹²¹ Pharaoh Ramses III boasts to the god, Ptah, that he has given special protection to widows and orphans. It appears that the pharaohs felt an obligation toward the god(s) to act righteously toward the poor, the widows, and the orphans. Furthermore, this protection is also reflected in the few legal documents of inheritance at our disposal, in one of which the wife of the deceased also had the right of inheritance.¹²²

D. Instruction of King Amen-Em-Opet:

The famous Instruction of Amen-Em-Opet, son of Ka-nakht, dating from around 1000 BCE, which very closely parallels the Book of Proverbs, especially Prov. 22.17-24.22, shows great concern for the oppressed and disabled.¹²³ A maxim declares that the oppressed must not be robbed and that no harshness may be inflicted on the disabled. The text reads:

*"Guard thyself against robbing the oppressed and against overbearing the disabled."*¹²⁴

Ample evidence is preserved which indicates that kings and rulers were encouraged to protect the weak. Was there, therefore, any religious connection between this policy and the Egyptian gods? It seems, in fact,

¹²⁰Fensham, "Widow, Orphan, and the Poor . . .," 133.

¹²¹Papyrus Harris I, in Fensham, "Widow, Orphan, and the Poor . . .," 133.

¹²²Fensham, "Widow, Orphan, and the Poor . . .," 133.

¹²³ANET, 421.

¹²⁴ANET, 422.

that this connection existed and that the sun-god Re, or his supplanter, Amon, was regarded as protector of the weak *par excellence*.¹²⁵ In a Late Egyptian text,¹²⁶ Amon-Re is called "vizier of the poor," and he is described as someone whose judgment is impartial. The similarity with the Instruction of Meri-Ka-Re, mentioned previously, is quite clear.

Notwithstanding the lack of legal material and the fact that wisdom literature was used as our main source, there appears to be a strong parallel between the Mesopotamian policy for the protection of the weak and that of Egypt's. In both contexts it was regarded as a virtue of kings and rulers. Besides, it was considered an important part of the duty of the sun-god, whether it was Shamash or Re. We can therefore see that, as in Mesopotamia, the religious obligations of Egypt were closely intertwined with the social and economical responsibilities.¹²⁷

VI. Others

No legal codes or wisdom books which could give us a clear picture of Canaanite culture before the Iron Age have thus far been found in Ugaritic literature.

A. Tale of Aqhat:

In the Tale of Aqhat, dating from about the second quarter of the fourth century BCE,¹²⁸ however, we find king Daniel, while waiting for

¹²⁵Fensham, "Widow, Orphan, and the Poor . . .," 133.

¹²⁶Anastasi II, 9:5 ff., in Fensham, "Widow, Orphan, and the Poor . . .," 133.

¹²⁷Fensham, "Widow, Orphan, and the Poor . . .," 134.

¹²⁸ANET, 149.

Kothar-Wahasis, the god of crafts, to bring a bow for Aqhat, his son, busy judging the cause of the widow and orphan. The text reads:

*Straightway Daniel the Rapha-man,
Forthwith Ghazir the Harnam[iyy]-man,
Is upright, sitting before the gate,
Beneath a mighty tree on the threshing floor,
Judging the cause of the widow,
Adjudicating the case of the fatherless.*¹²⁹

Again, judgment by a king in favor of widows and orphans is idealized.

For its part, Syria-Palestine did not have a separate legal tradition which exerted much influence on Old Testament law. This conclusion, asserts Van Houten, is based partly on arguments from silence, since no codes of law have been recovered in Syria, and because there is evidence that Syrian-Palestinian law was itself influenced by the Babylonian tradition.¹³⁰ Contacts with and influence from Mesopotamia appear to have been many. For example, at the scribal schools in Hazor and Megiddo, in levels which pre-date the Israelite occupation, legal documents were found which were not written in the local language, but in Akkadian, the language of Old Babylonia. Akkadian, we know, functioned as the language of law, even though Canaan was at that time under Egyptian sway.¹³¹

¹²⁹ANET, 151.

¹³⁰Van Houten, 25.

¹³¹Van Houten, 25.

As mentioned previously, many other legal documents have been discovered in what is called the Near East, however, none of these contain materials pertinent to our investigation.

VII. Adoption and Surrogacy

One of the distinctive characteristics of Near Eastern laws is the way in which the family is perceived and understood. In the context of the Ancient Near East, self-evident kinships, such as "son," "brother" and "eldest son," were not limited to biological affinities. Rather, these terms "define special juridical relationships, relationships that can be created artificially through various types of adoption and specifications."¹³²

While adoption seems to have been rather rare in classical Israel, if present at all, it appears to have been very common among its neighbors. Adoptions were not confined to cases of childlessness. In fact, a number of texts indicate quite clearly that the adopter already had children.¹³³ Reasons for adoption were varied, but, interestingly enough, only males seem to have been adopted. Moreover, the adopted son did not need to be an orphan or a child. Very often he was a member of the adopter's family (i.e., a nephew or cousin). Occasionally he may have been a member of the household, thus becoming son and heir in

¹³²Frymer-Kensky, 211. She says, 214: "... in the Near Eastern milieu the term 'first-born', like the terms 'son', 'father', 'brother', and 'sister', is essentially a description of a particular juridical relationship which may be entered into by contract as well as by birth. People adopt others as brothers, brothers adopt each other as sons, brothers adopt women as sisters, and the designation of an individual as 'first-born' can also be a matter of choice."

¹³³Frymer-Kensky, 211. (e.g., HG iii 23 and vi 1425).

return for taking care of his adopted parents in their old age and providing for them in their death.¹³⁴

A childless man's recourse was not limited to adoption. In Gen. 16 we find Sarai, who is barren, giving Hagar, her own maidservant, to Abram, for the purpose of producing a child through her. This same practice is repeated later when Rachel, who is also barren, gives Bilhah, also her maidservant, to Jacob (Gen. 30.3). When Bilhah gave birth to a son, Rachel called him Dan (30.6), declaring that God has thus vindicated (*dn*) her. Allusion to this peculiar custom is also found in the Laws of Hammurabi in a section dealing with a man who marries a *naditu*-priestess. These women belonged to a special class of women who may have been temple prostitutes or nuns. However, whatever their sexual condition or religious functions may have been, they were not legally allowed to have children. Thus we read:

144. *If a man married a naditu and that naditu has given a female slave to her husband and she (the slave) has then produced children: if that man then decides to marry a sugitu (a secondary wife), they may not allow that man (to do so); he may not marry the sugitu.*

145. *If a man married a naditu and she did not provide him with children and he decides to marry a sugitu, that man may marry a sugitu, bringing her into his house - with that sugitu to rank in no way with the naditu.*

146. *If a man married a naditu and she gave a female slave to her husband and she (the slave) has then borne children: if later that female slave has claimed equality with her mistress because she*

¹³⁴Frymer-Kensky, 211. Such an arrangement may underlie Abraham's complaint in Gen. 15.2-4 that, since he was childless, Eliezer of Damascus would inherit from him.

has borne children, her mistress may not sell her, (but) she may mark her with the slave-mark and count her among the slaves.

147. If she did not bear children her mistress may sell her.

These provisions, apart from the insights they give us into the relationship between Sarai and Hagar, also indicate the reason behind this apparently peculiar custom: a woman was expected to bear children for her husband. If she was incapable of doing so, whether prohibited by law, as the *naditu* in Hammurabi, or otherwise, the man could marry another woman. In order to forestall this, the barren woman might give her own personal slave to her husband so that she could bear children for her.¹³⁵ Frymer-Kensky, in her thorough analysis, is careful to point out that many of the domestic laws which we have concern only the *naditu*, and that "we do not know whether that stipulation is unique to that class of women or typical of the status of all women."¹³⁶ We may speculate that, if the custom applied to all women, only those who had a maidservant(s), and therefore a certain economic status, could avail themselves of the practice.

VIII. Evaluation

A few observations can be made at this stage. In both Mesopotamia and Egypt the protection of the weak was considered as two dimensional: vertically and horizontally. The vertical protection came from the gods Shamash or Re, and therefore fell in the religious sphere, while the

¹³⁵Frymer-Kensky, 211.

¹³⁶Frymer-Kensky, 211.

horizontal protection came from the king, the substitute of the sun-god, and thus fell in the social sphere.¹³⁷

While this may sound ideal, the question to be asked is: was the protection of the widow carried out in practical life? From our study it seems that this question must be answered in the affirmative. When a woman married a husband in Egypt or Mesopotamia, she left the house of her father and had no personal rights whatsoever. She had also no right of inheritance of the husband's property, although some late documents, especially in Egypt, allowed for a portion of the estate. In most instances, though, she was not left destitute. In CH §§171-174 we find that the widow was to receive back her dowry as well as the marriage-gift given to her by her former husband. Furthermore, she also had the right to stay in her husband's house. While a differentiation was made between a first wife (*xi-it-tum*) and a widow (*almattum*), in every case the woman was left with sufficient protection to ensure a (relatively) comfortable life.¹³⁸

No evidence, beside the Hittite Law §193, supports a Hebrew levirate-type marriage, but in view of the provisions made for widows, it can be concluded that this may not have been necessary, since various laws, and certainly customs, were in operation to insure that a widow would not be in need. This is important, because it would seem that, if a levirate-type marriage was not part of the legal codes of the people of the Ancient Near East, that of the ancient Israelites would have

¹³⁷Fensham, "Widow, Orphan, and the Poor . . .," 130.

¹³⁸Fensham, "Widow, Orphan, and the Poor . . .," 131.

stood out. One can only assume, at this point, that something of significance was in the making, and that something was economically related to the well-being of the widow(s).

Further, our investigation demonstrated that the laws pertaining to the care of widows did not change whether or not children had issued from the marriage. Certainly some considerations were made with regard to the distribution of the dowry if children were involved; however, this was not a consideration for the widow to be denied being taken care of by a relative of the deceased husband or to be married by one of them. We also found that, in the Middle Assyrian Laws, a true widow, the *almattu*, was a woman without males who were responsible for supporting her.

What has been discovered, thus far, is that widows, in the Ancient Near East, were taken care of. Their economical status, within the confines of the household and society at large, was legislated, thus somewhat assured. The levirate obligation, except in the case of the Hittites, does not appear to be the norm. Kings and pharaohs were the defenders of the poor, among whom widows figured prominently, and laws, or judgments, were promulgated to ensure that they would not suffer any abuse. Although the documents available are very limited, we can presume quite confidently that similar kinds of customs prevailed throughout the region, since these people interacted continually with one another.

CHAPTER 2

CARE OF WIDOWS IN THE OLD TESTAMENT

Widows in Ancient Israel were either incorporated within the larger framework of Israelite society or were totally ignored by it. Whatever the case may have been, they did constitute a large and rather significant group as numerous laws and references to them are made throughout the Old Testament. It is, therefore, from this perspective that the care of widows in the Old Testament needs to be investigated.

As an ancient people, even if she had made no claim to be the people of God, or to have received special instruction for the purpose of maintaining and expressing that status, part of Israel's conventional morality was respect and piety towards parents and ancestors.¹ Because of this, traditional academic biblical scholarship has assumed almost unquestioningly that the tribal structure of early Israel constitutes proof that it was both primitive and nomadic.² Moreover, beyond the truly primitive band of food-gatherers, kinship was rarely functional in the formation or preservation of large social units and, as Mendenhall has justly pointed out, "The history of large units which actually do have kinship ties is one of both fission and fusion — and I would suggest that considerable social and emotional energy is exhibited when either takes place in a given social field."³

¹Christopher J.H. Wright. "The Israelite Household and the Decalogue: The Social Background and Significance of some Commandments." *Tyndale Bulletin* 30 (1979): 118.

²George E. Mendenhall. *The Tenth Generation* (Baltimore, MD: The John Hopkins University Press, 1973): 174. See also Roland de Vaux. *Ancient Israel*. Vol. 1 (New York, NY: McGraw-Hill Book Co., 1965): 4-12.

³Mendenhall, 174.

I. Social Structure of Ancient Israel

In comparison with political states and empires, tribal organizations tend to be ephemeral. Nevertheless, in important respects, this period of ancient Israel's history remained normative for many centuries.

A. Kinship Ties.

The foundations for a cultural continuity were laid with a tenacity which outlived the supposedly much more efficient and indubitably more wealthy and powerful politically organized cultures of the ancient world.⁴ We may add that as social units become larger, kinship ties become increasingly dysfunctional as the basis for the larger group, while kinship terminology seems to become more used to express the new bond that ties the larger group together. With the state (as with the primitive chiefdom), closeness to the putative common ancestor becomes of great importance for establishing rank in society.⁵ Besides, once the true lineage bond of primitive society gives way to larger, more efficient and more complex forms of social organization, relationships of individuals likewise become more complex and multilateral. We find, therefore, that

the position of the individual is virtually always that of the center of a series of overlapping and concentric circles. If he is a member of a family, he is also a member of a larger group which

⁴Mendenhall, 175.

⁵Mendenhall, 176.

may or may not actually be held together by traced lineage bonds. On the higher level, he is a member of a tribe in which it is virtually inconceivable that traced genealogy is functional as the basis of tribal solidarity. On the next higher level, the federation of tribes represents the largest social unit in which the individual has status.⁶

Furthermore, each of these circles of social organization has its own structure and function, which is often in competition, for obligations to the lineage may well conflict with obligations to the tribe or the federation, as many biblical narratives of the early period demonstrate.⁷ In fact, each of the circles has its own kind of leadership and its own characteristic functions. These, of course, change as the social structure changes, as it did radically at least four or five times in the course of biblical history.⁸

The importance of real kinship in ancient Near Eastern cultures, or for that matter in most societies of human history, cannot be denied. However, the function of real kinship ties in society is so limited that something larger is needed. Furthermore, kinship ceases to be of much importance as the common ancestor of two persons becomes more remote. Thus, the five-generation pattern, according to which two individuals are related if they have a common ancestor within the fifth generation, seems to have been characteristic of the early biblical community.⁹ If, then, the blood tie was not the real basis for the larger social group, what was? Answering this question, Mendenhall suggests that

⁶ Mendenhall, 176-177.

⁷ See Jos. 22.10-34 and Jg. 19-20.

⁸ Mendenhall, 177.

⁹ See Ex. 20.5; Mendenhall, 177-178.

the concept of "race" may be dismissed from discussion as a relatively modern invention, and one which the human race can well dispense with in the context of social organization. But it needs to be considered whether or not the concept of race in the modern correlates to the ancient concept of the legendary or mythical ancestor. In both cases, the major social purpose of the concept is the concern for the continuity of some existing or emergent social contrast for political purpose – above all, for preservation of the group – and the guarantee that the conflicts internal are less important than those external.¹⁰

What modern anthropology classifies as a tribe has only incidental similarity to the concept of a tribe in early historical society. We know very little of that typological early form of political structure and function, even as concerns the Israelite federation. Thus, the anthropologist's analysis of a tribal culture in primitive society shows such contrasts to the Israelite tribes that something other than primitive pattern must be appealed to for adequate understanding. What is probable is that there was a constantly maintained network of kinship ties between the city population and those of the villages, through intermarriage, migration from the town to the village, and much more frequently, flow in the opposite direction. Moreover, these kinship ties were certainly maintained, as "city populations have always tended to have village origins and to return to the village for wives – and for burial."¹¹

¹⁰ Mendenhall, 179.

¹¹ Mendenhall, 186.

Families tended to be large extended ones which were patrilocal in residence, patripotestal in authority, and patrilineal in descent.¹² This means that all the sons stayed together in one household with the father, who remained the undisputed head of the family until his death. The father was responsible to contract marriages for his children and had unlimited power to dispose of a daughter in any way he saw fit, whether by contracting a marriage for her or even by giving her as a slave. When he contracted a marriage for his daughter, the father provided her with a dowry, which she got in lieu of an inheritance.¹³ The father was also expected to obtain wives for his sons, either by actively negotiating and contracting the marriage, or by acquiescing to it and providing the bridal payment.¹⁴

Upon getting married, the daughter left her father's house, took up residence with her husband's family and became a member of his family. The new bond created between the father-in-law and his daughter-in-law was a very strong one. Frymer-Kensky believes that this marriage created "the strongest new legal relationship, which must be seen as a transfer of membership from one household to another."¹⁵

When the father died the eldest son took over as head of the household. As such he was in charge of the household emblems, insignia and deities, and presided over the management of the estate. The

¹²Tikva Frymer-Kensky. "Patriarchal Family Relationships and the Near Eastern Law" *Biblical Archeologist* 44, 4 (Fall 1981): 211.

¹³Frymer-Kensky, 211.

¹⁴Michael L. Satlow *Jewish Marriage in Antiquity* (Princeton, NJ: Princeton University Press, 2001): 122-123.

¹⁵Frymer-Kensky, 211.

brothers could choose to continue to hold the land in common for a period of time rather than divide the inheritance immediately. They could also choose to divide the smaller property, such as houses and orchards, and maintain corporate ownership of the productive land. Whatever their choice may have been, they first had to provide dowries for their unmarried sisters and insure the bridal payment for their younger unmarried brother(s). It was only after these had been taken care of that the eldest son received a preferential share at the division of the estate.¹⁶

The cohesion of the kin-group prompted men to rally spontaneously to the cause of a brother, or to protect the family honor, if necessary by violence.¹⁷ It also bound the woman to her husband's family even after his death, and even at the cost of giving up her honor or her homeland.¹⁸ But it also showed itself in the finer forms of consideration toward the father and honor to the mother. This binding to the husband's family led some women to heroic self-denial,¹⁹ and whenever possible it sought to support those related by blood²⁰. This social bond resulted in a conservative retention of traditional morals and forms of law. Thus, the inheritance of one's father was regarded as sacred, and men were not to be inveigled into alienating it for gain.²¹ In such a context, society protected the institutions of blood-revenge

¹⁶Frymer-Kensky, 211.

¹⁷See Gen. 13.8ff.; 14.14; 37.22, 29; 34.25ff.; 2 Sam. 13.20ff.

¹⁸See Gen. 38.13ff.; Ruth 1.16f.

¹⁹See 2 Sam. 21.10.

²⁰See Gen. 24.49; 29.10; Ex. 2.11; Jg. 11.6ff.; 20.12f.; 2 Sam. 19.13.

²¹See 1 Kg. 21.3.

and of levirate, and only very gradually did it replace them by objective processes of law.²²

In close connection with the particular character and talents of the people, along with their historical experience, the influence of their environment, and their religious life and thought, a complex of rules and instructions was formed. This constituted the basis of the community and the precondition of membership, and was thus binding upon every individual within that society. Such a norm, which was obligatory upon all, derived its power of conviction and its authority from the sheer givenness of the community and the nation as the indisputable foundation of all life. This norm was voiced in Israel in expressive words for socially unacceptable behavior such as "folly in Israel" and "one ought not to do so."²³ Likewise, rules of conduct which proceeded from the natural impulses of community and self-preservation, such as the pronounced sense of solidarity in the family and the tribe, belonged to the same set of norms. Thus, as Eichrodt points out, "the building up of the family with numerous offspring is of equal obligation on both man and woman, and in a crisis makes even bizarre measures seem justifiable, or at least excusable."²⁴

However, many areas of popular life were still outside the control of the moral norms. In these areas conduct was left to the free discretion of the individual, and was often governed solely by natural

²²Walther Eichrodt. *Theology of the Old Testament*. Vol. 2 (Philadelphia, PA: The Westminster Press, 1967): 318.

²³Eichrodt, 317. For the positive formulation see Deut. 25.9.

²⁴Eichrodt, 317; see Gen. 16.2; 19.32; 30.3, 9; 38.26.

impulse. Thus we find that the sexual morality of the man was very largely uncontrolled. While it is true that he was forbidden to encroach upon his neighbor's marriage, polygamy was still open to him,²⁵ and concubinage with slave-women or with those captured in war was quite usual.²⁶ Also, apparently as a result of Canaanite influence, intercourse with prostitutes was not felt to be repugnant.²⁷ Yet, there was a series of institutions, hallowed by morality and law, on which rested the moral divine-force of the concept of God that seems to have been considered different. For example, the polygamous form of marriage accords with the evaluation of the woman as a personality whom God has called to responsibility just as much as He has the man.²⁸ Yet the acquisition of a wife by payment of a marriage-price, and the recognition of the man alone as having the right to divorce, implied the permanently inferior position of women, and doubtless contributed to the fact that the personal worth of the woman was easily forgotten in favor of the attitude which saw her as an object and as the chattel of the man. Also, it seems that the moral requirement of guest-friendship was stronger than respect for the personal value of the woman, or for one's obligations toward one's own children.²⁹ This lack of respect for the personal value of woman is most evident in the duty of levirate marriage which transcended the prohibition of unchastity and of incest.³⁰

²⁵ See Gen. 4.19; 21.10; 22.24; 30.3ff.; Deut. 21.15; 22.19; 1 Sam. 1.2, 6; 25.43.

²⁶ See Ex. 21.8ff.; Deut. 21.10ff.

²⁷ See Gen. 38.21; Eichrodt, 323.

²⁸ Eichrodt, 323.

²⁹ See Gen. 19.6ff.; Jg. 19.24f.; Eichrodt, 324.

³⁰ See Gen. 38.14, 26.

B. Definition of Widowhood.

Within such a framework, widows constituted a group within a group, so much so that special considerations were given for their care. From the earliest pages of the Bible³¹ we find that special considerations were in effect, whereby a widow who had no son was to be given in marriage to her husband's next brother in order to be taken care of. Also, as Israel emerged as a people, direct laws were given so that widows with no apparent means of sustenance could survive and be counted as members of the community.

From our examination of the widow (*almattu*) in the Middle Assyrian Laws we found that the English word "widow" does not accurately translate *almattu*, for she was not a "widow" in the western sense of the word. Our understanding of a widow is that of a once-married woman whose husband has died. Hence, her conjugal obligations to her husband are now terminated and she is free to marry someone else if she chooses. In fact, the traditional vows exchanged during the wedding ceremony express this concept through the phrase "till death do us part."³² However, this view of death as a severance of the marriage bond is not found in all societies. Thus, in ancient Israel we discover that a woman whose husband has died continues to be called his wife.³³ For example, Ruth is described by Boaz as אִשְׁת־הַדָּאֵם, "the wife of the dead man" (4.5) and

³¹See Gen. 38.

³²Paula S. Hiebert. "'Whence Shall Help Come to Me?': The Biblical Widow" in *Gender and Difference in Ancient Israel*. Peggy L. Day, ed. (Minneapolis, MN: Fortress Press, 1989): 129.

³³See Michael Kirwen. *African Widows* (Maryknoll, IN: Orbis Books, 1979). In his studies of four societies of northwest Tanzania that practice levirate marriage, Kirwen found that in the Luo society the widows considered themselves to be legal, functioning wives; hence they were not free to remarry. The technical term in Luo for widow, *chi liel*, literally means "wife of a grave."

אִשְׁתֵּי מַחֲלוֹן "the wife of Mahlon" (4.10).³⁴ In 2 Kg. 4.1-7 the story is told of a woman who entreats Elisha to help her pay off her deceased husband's creditors. This woman is introduced in the narrative with the words: וְאִשָּׁה אַחַת מִנְּשֵׂי בְנֵי הַנְּבִיאִים, "One woman from the wives of the sons of the prophets."³⁵ Even in the levirate law of Deut. 25.5-10, the woman is referred to as אִשְׁת־הַמֵּת "the wife of the dead man."³⁶

From this, it seems evident that there was a strong belief that death did not dissolve the marriage bond. However strange this may appear to us, this idea becomes intelligible only when it is placed within the context of a particular society's understanding of marriage which, in most traditional societies, is based on kinship structure. Thus marriage is not so much the union of two individuals as it is the union of two families.³⁷ The formation of marriage in antiquity, as in many societies today, also created an immediate three-way economic relationship between the families of the spouses and the spouses themselves. Since one of the most important functions of marriage was (is?) to assure the orderly and desired devolution of family property, "the economic relationship between a family, their children, their children's spouses, and their grandchildren, is intimately linked to strategies of property succession."³⁸ At the time of the marriage an

³⁴The RSV and NAB both translate it accurately as "wife." At 4.10 the RSV and NAB again translate אִשָּׁה as "widow," and this time are joined by the JB. The JPSV and NEB retain the translation "wife."

³⁵2 Kg. 4.1.

³⁶Hiebert, 129.

³⁷Hiebert, 129; see also R.M. Keesing. *Kin Groups and Social Structure* (New York, NY: Holt, Rinehart and Winston, 1975) and R. Foc. *Kinship and Marriage: An Anthropological Perspective*. Cambridge Studies in Social Anthropology 50 (Cambridge, England: Cambridge University Press, 1967).

³⁸Satlow, 199.

exchange of goods between the families took place. This practice is referred to by the terms "bridewealth" and "dowry," and involved the transmission of property and the transfer of rights at marriage.³⁹ In order to understand the nature, function, and purpose of each of these, a number of variables must be taken into consideration. These variables include the givers and the receivers, the contents, the returnability, the variability (fixed or variable), the control and the payment schedule.⁴⁰ The number of possible combinations of these variables, as well as the importance attached to the practice of bridewealth and/or dowry, differs from one society to another. Furthermore, there was a relationship between this practice and the economic resources of the widow. Thus, certain questions need to be kept in mind: Who received what at the time of marriage? What property did the woman own when her husband died? What conditions, if any, must she satisfy in order to retain control of her property?⁴¹

Survival in any society depends on the provision of the basic necessities of food, clothing, and shelter. What, therefore, were the economic means of the Hebrew/Israelite widow (~~אִתְּךָ~~)?

According to the Code of Hammurabi (CH §§159-161),⁴² the bridegroom gave the bridewealth to his future father-in-law. In the Middle Assyrian

³⁹ Jack Goody and Stanley Tambiah. *Bridewealth and Dowry*. Cambridge Papers in Social Anthropology 7 (Cambridge, England: Cambridge University Press, 1973): 1-21, 61-67.

⁴⁰ Goody and Tambiah, 62.

⁴¹ Hiebert, 131.

⁴² CH §159 = "If a man, who has had a gift brought to his father-in-law's house (and) given a bridal gift, has then looked upon another woman and states to his father-in-law 'I will not take thy daughter to wife', the father of the girl shall take and keep anything that has been brought to him."

CH §160 = "If a man has had a gift brought to his father-in-law's house (or) has given a bridal gift, and the father of the girl states 'I will not give thee my

Laws (MAL §38)⁴³ the recipient of the bridal gift is not so clear.⁴⁴ There is evidence that among the Hittites⁴⁵ and in ancient Ugarit⁴⁶ the bride's father, after receiving the dowry, handed over part of it to his daughter. Much later, in the Jewish community that existed at Elephantine in Egypt, Aramaic documents belonging to the fifth-century BCE describe marriage contracts which specify that the bridewealth (נִזְוָה) is given to the head of the girl's family⁴⁷ and that it was added to the girl's dowry. If this is the case, then, at Elephantine we have another example of indirect dowry.⁴⁸ Satlow, in his thorough analysis of marriage in Jewish antiquity, affirms that the dowry served different economic functions. He states:

In a society that does not allow or frowns upon daughters inheriting their fathers, it can serve as a vehicle for the transmission of property. A dowry can be seen as "compensating" a husband for his maintenance of a wife. Finally, a dowry can help

daughter (in marriage)', he must double everything that has been brought to him and restore (it)."

CH §161 = "If a man has had a gift brought to his father-in-law's house (and) has given a bridal gift, and his friend has then slandered him, (if) his father-in-law states to the (prospective) husband of the wife (Thou shalt not take my daughter (in marriage)', he must double and restore everything that has been brought to him; and his friend shall not marry his wife."

⁴³MAL §38 = "If a woman is still dwelling in her father's house and her husband divorces her, he may take the ornaments which he himself has bestowed on her; he shall not claim the bridal gift which he has brought; he (then) is quit in respect to the woman."

⁴⁴Hiebert, 132.

⁴⁵See K. Grosz. "Dowry and Brideprice in Nuzi" in *Studies on the Civilization and Culture of Nuzi and the Hurrians*. M.A. Morison and D.I. Owen, eds. (Winona Lake, IN.: Eisenbrauns, 1981), 161-82 and K. Grosz. "Bridewealth and Dowry in Nuzi" in *Images of Women in Antiquity*. A. Cameron and A. Kurt, eds. (Detroit, MI: Wayne State University Press, 1983): 193-206.

⁴⁶A.F. Rainey, "Family Relationships in Ugarit." *Or* 34 (1965): 18; see also J. Gray, *The Legacy of Canaan*. *Vetus Testamentum Suppl.* 5, 2d ed. (Leiden, The Netherlands: E.J. Brill, 1965): 251.

⁴⁷R. Yaron. "Aramaic Marriage Contracts from Elephantine." *Journal of Semitic Studies* 3 (1958): 1-39 and R. Yaron. "Aramaic Marriage Contracts: Corrigenda and Addenda." *Journal of Semitic Studies* 5 (1960): 66-70.

⁴⁸Hiebert, 132.

to protect a woman from divorce, both by discouraging a man from divorcing his wife and thus losing use of the dowry, and, should this fail and he does divorce her, by providing her with a means of support.⁴⁹

When we turn our attention to the biblical text we find something similar. In Gen. 31.15, from the words of Leah and Rachel, we learn that their father, Laban, received money for them:

הֲלוֹא נִכְרִיּוֹת נִחְשַׁבְנוּ לוֹ כִּי מִכְרָנוּ וַיֹּאכַל גַּם-אֶכּוֹל אֶת-כֶּסֶפֵּנוּ

Are we not reckoned by him as foreigners? For he has sold us, and has also consumed our purchase price [lit. our money/silver].

They seem to be referring to the bridewealth that was given for them at the time of their marriage. While some scholars cite this passage to prove that the bridewealth belonged to the wife, the two women's reference to "our money/silver" does not necessarily mean the silver that belonged to them; it could just as well mean the silver that was given for them.⁵⁰

Two other observations can also be made from this text. First is the declaration by Leah and Rachel that their father now considers them as foreigners. This affirmation could refer to the fact that since they are now married they are no longer considered his responsibility; they are now part of their husband's family. Second is the use of the verb

⁴⁹Satlow, 204.

⁵⁰Hiebert, 132.

מָכַר (to sell), which certainly indicates that Leah and Rachel, at least, understood their marriage to have involved a purchase.⁵¹

We may conclude that ordinarily the bride was not the recipient of the bridewealth in the Ancient Near East in general and in Israel in particular. Where the evidence indicates that the bride did receive part of the bridewealth,⁵² it is more proper to consider the transaction as indirect dowry. Thus, a widow would not have access to her bridewealth as a means of economic support.⁵³

The Bible does mention other goods that originated from the groom's family and were given to the bride's family at the time of marriage. It is, therefore, necessary to examine the relevant texts in order to determine first of all if the goods were given to the woman and, if so, whether or not these could provide substantial economic support for her during her widowhood.

The first account is that of the quest for a bride for Isaac in Genesis 24. There, on several occasions, Abraham's servant bestows jewelry and other gifts on Rebekah and her family. When the servant realizes that Rebekah is a potential bride for Isaac, he gives her a gold ring and two gold bracelets (vv. 22, 47). Then, when Rebekah's

⁵¹ See also Hos. 3.2 and Ruth 4.10. There has been a long debate about whether or not marriage in the Bible was marriage by purchase, i.e., marriage with bridewealth. See William Raccah's "Against But For: Jesus View of Remarriage in Light of the Biblical, Extra Biblical and Rabbinic Literature on Divorce and Remarriage." MA Thesis (Vanguard University/Southern California College, CA: Theological Research Exchange Network, 1987): 161-164.

⁵² As was the case with the Hittites at Nuzi, the Canaanites at Ugarit and some Jews at Elephantine.

⁵³ Hiebert, 133. See Satlow, 204-209.

family agrees to the marriage, the servant produces more gifts. This time Rebekah receives silver and gold ornaments and clothes, while her brother and mother receive costly gifts (v. 53).

A second account is found in Genesis 34. Shechem's frustration with Dinah led him to say (in v. 12) to her father and brothers,
 תִּרְבוּ עָלַי מֵאֵר מְהֵרָה וּמִתֶּן כְּאֲשֶׁר תֹּאמְרוּ אֵלַי וְתָנוּ לִי אֶת-הַנְּעִר
 לְאִשָּׁה ("Ask of me ever so much as bridewealth (מְהֵרָה) and gift (מִתֶּן)
 and I will give as you say to me"). However, nothing further is said concerning the contents or the recipient of this מִתֶּן. Besides, it is not clear in either of these two texts whether or not the bride was allowed to keep these gifts throughout her lifetime.⁵⁴

To be better able to formulate a theory concerning these gifts, we need to turn once again to some of the customs prevalent in ancient Mesopotamia. In the Middle Assyrian Laws these goods are designated by the terms *dumēqi*, *bibtu*, and *subullū*, while a further gift is identified in both the Code of Hammurabi and the Middle Assyrian Laws as the *nudunnū*. In MAL §§25, 26, 38⁵⁵ the *dumēqi* are ornaments (i.e., jewels)

⁵⁴Hiebert, 133.

⁵⁵MAL §25 = "If a woman is still dwelling in her father's house and her husband is dead, (and) her husband's brothers have made no division (of the inheritance) and she has no son, her husband's brothers, having made no division, shall take any ornaments which her husband has bestowed on her (and which) are still in her possession. They shall have what remains passed before the gods (and) make a (formal) claim (and) take (what is theirs). They shall not be seized for (trial by ordeal by) the river-goddess or the oath."

MAL §26 = "If a woman is still dwelling in her father's house and her husband is dead, (then), if there are sons of her husband, they shall take any ornaments which her husband has bestowed on her; (but) if there are no sons of her husband, she indeed shall take (them)."

MAL §38 = "If a woman is still dwelling in her father's house and her husband divorces her, he may take the ornaments which he himself has bestowed on her; he shall not claim the bridal gift which he has brought; he (then) is quit in respect to the woman."

given to the bride by the husband. While the bride may enjoy their use during the marriage, the husband retains ownership. Upon his death the widow may claim the *dumāgi* only in the absence of heirs of the deceased husband, namely his sons or brothers. For their part the *bibtu* (MAL §30)⁵⁶ and the *subullū* (MAL §§30, 31),⁵⁷ which may both be translated as "marriage gift," consisted of movable property, some of which was edible. It is possible that part of the function of the *bibtu*, and *subullū* would have been to defray the expenses of the marriage celebrations. It is also possible that they were gifts bestowed on the bride's family by the groom's kin.⁵⁸ Now, if the custom with respect to ornaments/jewels in ancient Israel was similar to that in Mesopotamia, we may assume that a widow could have claimed jewelry as her own only if she had had no sons to whom she could have passed it.⁵⁹ However, it is doubtful whether this jewelry would have been sufficient toward her support throughout her widowhood.

⁵⁶ MAL §30 = "If a father conveyed (or) brought the (customary) gift to the house of his son's father-in-law (and) the woman has not been given to his son, and another of his sons, whose wife is dwelling in her father's house, has died, he shall give his dead son's wife to be a spouse to his other son to whose father-in-law's house he has brought (the gift). If the owner of the girl, who has accepted the present, is not willing to give his daughter, the father who has brought the present, if he pleases, may take his daughter-in-law (and) give her to his son; or, if he pleases, he may surely take (back) so much as he has brought, lead, silver, gold, (or other things) not being edible, in full amount; he shall not claim the things which are edible."

⁵⁷ MAL §31 = "If a man has brought the (customary) present to his father-in-law's house and his wife has died, (and) his father-in-law has (other) daughters, if his father-in-law pleases, he may marry a daughter of his father-in-law in place of his dead wife; or, if he pleases, he may take (back) the money which he has given. Neither corn nor sheep nor any (other) thing which is edible shall be given (back) to him; he shall receive only money."

⁵⁸ Hiebert, 134.

⁵⁹ Hiebert, 134.

In ancient Mesopotamia the widow may have benefited from the *nudunnû*⁶⁰ as another possible source of support. This *nudunnû* was given to the wife by her husband at some point during the marriage. In the Code of Hammurabi (CH §§171 and 172)⁶¹ and in the Middle Assyrian Laws (MAL §§27 and 32)⁶² the specific purpose of the *nudunnû* was to provide for the wife's maintenance during her widowhood. However, there is no indication in the biblical text that such a practice existed in Israel, and it is thus impossible to know whether or not the wife received from her husband a gift like the *nudunnû* to maintain her during her widowhood.⁶³

The other large category of property involved in marriage transactions was the dowry. Goody and Tambiah characterize it as "a type

⁶⁰Driver and Miles translate *nudunnû*. as "settlement" in the Code of Hammurabi; Meek, for his part, in ANET translates it as "marriage gift" in the Middle Assyrian Laws. *udunnû*. also had the meaning of "dowry" in the Old Babylonian period.

⁶¹CH §171 = "Or, if the father in his lifetime does not state to the sons whom the slave-girl has borne him '(Ye are) my sons', after the father goes to his fate, the sons of the slave-girl shall not take shares in the property of the paternal estate with the sons of the first wife; the release of the slave-girl and her sons shall be granted, (and) the sons of the first wife shall make no claim to the sons of the slave-girl for slavery. The first wife shall take her dowry and the settlement which her husband made her and assigned in writing to her on a tablet and may dwell in the dwelling-place of her husband; so long as she lives she shall have the usufruct (of this property). She shall not sell (it). Her estate belongs to her sons."

CH §172 = "If her husband has not made her a settlement, they shall make good her dowry to her and she shall take a share like (that of) one heir from the property of her husband's house. If her sons persist in persecuting her to make her go out of the house, the judges shall determine the facts of her case and lay a penalty on the sons; that woman shall not go out, she shall surrender the settlement which her husband gave her to her sons; she shall take her dowry which she brought from her father's house, and a husband after her own heart may marry her."

⁶²MAL §27 = "If a woman is still dwelling in her father's house (and) her husband has been visiting (her), any settled property which her husband has given her, he may take (back) as his own; he may not claim what comes from her father's house."

MAL § 32 = "If a woman is still dwelling in her father's house and(?) her settled property has been given (to her), whether she is taken or is not taken to her father-in-law's house, she shall bear (any) debts or liability or punishment of her husband."

⁶³Hiebert, 134.

of pre-mortem inheritance to the bride,"⁶⁴ whereby the daughters received their part of the family estate at the time of marriage. Thus the dowry functioned as a kind of familial fund that passes down from parents to daughters, the source of which was usually the woman's parents, or her siblings if her parents were deceased. Both movable and immovable property could form part of the dowry. If land comprised part of it, then among farming communities there often was a correlation between the dowry and the requirement of endogamy, that is, marriage within that specific group from one generation to the next. The contents of the dowry varied with the status of the bride. And, while the bride was the recipient of the dowry, she did not necessarily administer it. Control could remain with the woman throughout the marriage, or pass to the husband who functioned as its manager, or be shared by both husband and wife.⁶⁵

Whatever we may speculate and assume by association with the ancient cultures of the time, evidence for the practice of the dowry in ancient Israel is sparse, and reflects a custom during or shortly after the settlement of the Israelites in Canaan. In 1 Kgs. 9.16, when the daughter of Pharaoh marries Solomon, she receives the city of Gezer from her father as part of her dowry (שְׁלָחִים, literally "parting gifts"). But, as Hiebert rightly points out, "since this is a royal wedding, the transfer of land in the form of an entire city can hardly be considered an example of the typical dowry."⁶⁶ Furthermore, it is very probable

⁶⁴Goody and Tambiah, 1. See Satlow, 204-209.

⁶⁵Hiebert, 134-135.

⁶⁶Hiebert, 135.

that this present was politically motivated, and that it illustrates much more an Egyptian custom than an Israelite one.⁶⁷

Older than the preceding text is the text found in Joshua 15.19 with a parallel in Judges 1.15. These texts narrate the transfer of land to a woman, an action which could be interpreted as the giving of a dowry. These passages describe how Achsah, the daughter of Caleb, became the wife of Othniel because her father had promised her in marriage to the man who would successfully capture Kiriath-Sepher.⁶⁸ Shortly after she was given to Othniel she approached her father with a request for springs of water, acknowledging that he had already given to her the land of the Negev. Caleb granted Achsah's request with both upper and lower springs. Now, since Achsah had just married Othniel, it is possible to regard Caleb's gift of the springs as a dowry. What we find is that both land and water are involved here and this can best be understood if the action is placed within the context of endogamy. Achsah is not marrying just anybody. She has married someone within her own family,⁶⁹ which means that the land will remain within Caleb's patrilineage even though it will be passed through a woman.⁷⁰

Earlier still is the account of slaves given as a dowry to Rebekah when she leaves her homeland,⁷¹ and to Leah and Rachel by their father, Laban, on the occasion of their marriage to Jacob.⁷²

⁶⁷ Hiebert, 136.

⁶⁸ Jos. 15.15-19; Jg. 1.11-15.

⁶⁹ Jos. 15.17; Jg. 1.13.

⁷⁰ Hiebert, 136.

⁷¹ Gen. 24.59, 61.

⁷² Gen. 29.24, 29.

As can be observed, evidence for the practice of dowry in ancient Israel is meager. Yet, in the light of what was practiced in ancient Mesopotamia, some general remarks may be made about it. We may conclude that the dowry was property owned by the woman, her share of the family inheritance. However, its content – slaves or other movable goods – does not appear to have been sufficient to provide economic support for a widow for any length of time, although this would have varied according to the economic condition of the family. Still, whether or not even a sizable dowry could have supported a widow is questionable.⁷³ On the other hand, dowry in the form of land was rare. This was due to the Hebrew belief that each man possessed his *נְזִיקָתוֹ* (patrimony or inheritance) to be handed down from father to son. The alienation of any part of the *נְזִיקָתוֹ*, which would have resulted from its being given as dowry to a daughter, was therefore inconceivable. Where the Bible records the transfer of land to women, besides the two cases of Pharaoh's daughter and Achsah already discussed, stipulations were legislated to cover this unique situation. Thus we find the five daughters of Zelophehad inheriting their father's land because there were no sons in the family (Num. 27.1-11). However, these women were to marry within the clan (*בְּשֵׁבֶט אֲבוֹתָם*) of their father in order not to alienate the land.⁷⁴

A grim picture emerges as we consider the biblical widow and her economic needs. Her well-being was directly related to her link with

⁷³Hiebert, 136.

⁷⁴Hiebert, 137; see Numbers 36.1-9.

some male, more specifically a close male relative. Although a married woman may have owned some property in the form of her dowry, this was not enough to support herself on that alone when her husband died. In most cases her maintenance would have been the responsibility of either her sons or her father-in-law. However, when these male persons were nonexistent, or unwilling to help her, then the widow's connection to the kinship structure was severed. She became an *אלמנה*, a true widow.

II. Genesis 38.6-26: Judah and Tamar

This story begins with Judah taking a wife named Tamar for Er, his first-born son. Then, the text tells us, Yahweh killed Er; that is, Er died prematurely and unexpectedly. So what we would call misfortune is expressed by the Israelites as the direct action of God.⁷⁵ Er died childless, and thereupon Judah bade his second son, Onan, to perform the duty of the husband's brother towards her, according to the levirate regulations. It seems that Onan, the next oldest brother, had not yet established his own household. And, since Judah had the ultimate responsibility for Tamar, he could simply impose the application of this custom.

Onan, however, evaded his duty. Only ostensibly undertaking the responsibility given to him, he took care that no heir could possibly result from his union with Tamar, "But what he did was displeasing in the sight of the Lord; so He took his life also" (Gen. 38.10). Thompson rightly points out that if Onan had openly refused the levirate

⁷⁵ See Ruth 1.13, where Naomi says: "The hand of Yahweh has gone forth against me."

obligation, "Tamar would have been able to take her own independence, as well as, as we must suspect, her dead husband's share of the inheritance."⁷⁶ However, since Onan did accept, albeit with reluctance, his levirate obligation, Tamar was left without any way of proving her case. Hicks mentions that, "whenever he went in to her (the tense is frequentative), he would spill his semen on the ground."⁷⁷ The sin of Onan was not the supposed sexual perversion bearing his name.⁷⁸ This is clearly an attempt on the part of Onan to appropriate his dead brother's inheritance for himself. In fact, "he was trying to steal his dead brother's inheritance, which, upon Judah's death, Onan, as *go'el* for Tamar, would control and keep in lieu of a possible future son of Tamar's."⁷⁹ Yahweh, knowing all things, even those of the heart, "took his life also."⁸⁰ It is very clear from this story that the duty of the husband's brother, or levirate, was regarded as imperative at this period.

Judah, then, using deception to get rid of Tamar, told her to remain a widow in her father's house⁸¹ until his youngest son, Shelah, should be grown up. Judah, however, did not give Tamar to Shelah when he

⁷⁶Thomas and Dorothy Thompson. "Some Legal Problems in the Book of Ruth" *Vetus Testamentum* 18, 1 (1968): 94.

⁷⁷R. Lansing Hicks. "Onan." *The Interpreter's Dictionary of the Bible*. vol. 3 (Nashville, TN: Abington Press, 1962): 602. This is the expression used in the KJV and RSV; but *וַיִּשְׂתַּח אֶרְצָה* would be better translated as "would spoil on the ground," that is, make it ineffective.

⁷⁸Known as "onanism," it has come to mean "withdrawal in coition before ejaculation."

⁷⁹Thompson, "Some Legal Problems in the Book of Ruth," 94.

⁸⁰Gen. 38.10.

⁸¹See L. Stager. "The Archaeology of the Family in Ancient Israel" *BASOR* 260 (1985): 18-23 where he discusses *bêt 'ab*, which he translates "lineage" or "household." Thus the phrase *bêt 'ab* does not mean that Tamar returned literally to her father's house, rather she returned to her paternal kin.

grew up. In the patriarchal society that was ancient Israel it was customary for a woman to enter her husband's family at the time of marriage. Even if her husband were to die, she was still considered to be part of his family, to be subject to the authority of a male of his kin.⁸² The story of Tamar, the daughter-in-law of Judah, illustrates this. It is important to note that, in sending Tamar home to her own father, Judah was giving up neither his authority nor his responsibility for her. In fact, later on Judah condemns her to death for adultery,⁸³ even after Tamar had resumed living with her paternal kin. When she told she was pregnant, it was Judah who ordered her to be burned. We hear nothing from any member of Tamar's family. So even though death had ended the physical relationship that existed between Tamar and Er, it had not terminated the relationship of Tamar with her husband's family, with the mutual rights and obligations incumbent upon both parties.⁸⁴

Realizing, eventually, that Judah had no intention of marrying her to Shelah, his youngest son, nor of fulfilling the responsibility himself now that his own wife was dead,⁸⁵ Tamar pretended to be a harlot, put on a veil in order not to be recognized, and enticed Judah to have intercourse with her. Accordingly, she, without his knowledge, tricked him into fulfilling the levirate obligation. Afterwards, when Judah learned that Tamar was with child, he ordered her to be brought

⁸²Hiebert, 129.

⁸³Gen. 38.24.

⁸⁴Hiebert, 130.

⁸⁵It is interesting to note that, for the author of this story, the fact that Judah's wife was dead was very important. See Millard Burrows. "Levirate Marriage in Israel" *Journal of Biblical Literature* 59 (1940): 23-33.

before him to be burned for playing the harlot.⁸⁶ Her supposed offense, however, was not so much that of whoredom. Rather, she had committed a breach of the custom of the levirate, inasmuch as she was reserved for the *levir*, the brother-in-law. Tamar was able to vindicate herself by proving that Judah, upon whom the duty of the levirate ultimately lay, was the father of her child. Thus she was acquitted, not because Judah, her judge, was *particeps criminis*; but because, when he discovered the truth, he could only say: "she is more righteous than I, in that I gave her not Shelah my son."⁸⁷ It appears, therefore, that Tamar had the right to obtain fulfillment of the duty of the levirate by Judah, if his sons failed to do so.

In this story, which is much the most primitive of the three found in the Bible concerning the custom of the levirate,⁸⁸ attention is drawn to the very active part taken by Judah: he took a wife for Er, he ordered Onan to perform the duty of the levirate, he sent his daughter-in-law to her father's house, he decided whether she should or should not be given to Shelah, and he, himself, ultimately fulfilled the duty of the levirate. These facts clearly suggest that Tamar's relation to Judah was closely similar to that of a father who had acquired a girl "for the purpose of a daughter-in-law."⁸⁹ That purpose, as is evident from the text (Er died childless, v. 6), was mainly for the producing of an heir who would not only carry the dead man's name, but who would also inherit the dead man's property. However, Neufeld denies any other

⁸⁶See Lev. 20.14 and Lev. 21.9, although both these laws are much later than our story.

⁸⁷Drivers and Miles, *The Assyrian Laws*, 242; Gen. 38.26.

⁸⁸The other two are found in Deut. 25.5-10 and the book of Ruth.

⁸⁹Drivers and Miles, *The Assyrian Laws*, 241.

purpose to the siring of an heir for the dead man than the permanent protection and support of the woman,⁹⁰ whether it be by a brother or by the dead man's father. In fact, this duty on the part of the father-in-law is similar to that found in the Hittite Laws⁹¹ and in the Assyrian laws,⁹² where a marriage between a man and his daughter-in-law seems to be recognized.⁹³

Though somewhat farther afield, but still valuable for our purposes, are two parallels found in the Laws of Manu. The first one, §62, reads:

*But when the purpose of the appointment to cohabit with the widow has been attained in accordance with the law, these two shall behave towards each other like a father and daughter-in-law.*⁹⁴

The reason for forbidding this is seen immediately in the next law, §63, which reads:

⁹⁰E. Neufeld. *Ancient Hebrew Marriage Laws* (London, England: Longmans, Green & Co., 1944): 30. See also Thompson. "Some Legal Problems in the Book of Ruth," 85.

⁹¹HL §193 reads: "If a man has a wife and the man dies, his brother shall take his wife, then his father shall take her. If also his father dies, his brother shall take his wife [and also] the son of his brother shall [take her]. (There shall be) no punishment."

⁹²MAL §33 reads: "[If] a woman is still dwelling in her father's house (and) her husband is dead and [she] has sons, [she shall dwell in a] house [belonging to them where she chooses. If] she has no [son, her father-in-law shall give her] to whichever [of his sons] he likes ... or, if he pleases, he shall give her as a spouse to her father-in-law. If her husband and her father-in-law are [indeed] dead and she has no son, she becomes (in law) a widow; she shall go whether she pleases."

⁹³Drivers and Miles, *The Assyrian Laws*, 242.

⁹⁴This law and the one following come from Bühler, *Laws of Manu, Sacred Books of the East*, vol. 25; see §59ff., as cited in Thompson, "Some Legal Problems in the Book of Ruth," 95.

If these two (being thus) appointed deviate from the rule and act from carnal desire, they will both become outcasts, (as a man) who defiles the bed of a daughter-in-law.

From this, it seems quite evident that the practice of the levirate was considered to be on the borderline of incest, though it was never identified with it to such an extent that it would be considered contrary to the laws forbidding incestuous relationships. Nevertheless, because it was not considered equivalent to marriage, and because of its closeness to incest, it was felt necessary to limit the levirate relationship to what was necessary to fulfill its purpose. Thus the one appointed to fulfill the obligation "*shall approach her at night anointed with clarified butter and silence, (and) beget one son, by no means a second.*"⁹⁵

Some commentators maintain that when Tamar tricked Judah, the Genesis version of the levirate obligation was different from that found in Deuteronomy, since they are convinced that the deuteronomic law limits the levirate to the brothers of the deceased only, and that it does not allow for the father-in-law's fulfilling the levirate. However, as we shall see, the deuteronomic law does not limit the levirate, but rather describes the ordinary situation in which its application would take effect. It is the responsibility of the head of the household to take care of the people within his purview and, in this case, the head of the household is clearly Judah. The ultimate responsibilities to take care of Er's wife and to see that her rights are secured are his. And,

⁹⁵Laws of Manu §60. Thompson, "Some Legal Problems in the Book of Ruth," 95.

in order to fulfill this obligation he can either have one of his sons beget a son for her, as he had commanded Onan to do, or do so himself.⁹⁶

Both Rowley and Neufeld refer to the story of Judah and Tamar in support of their view that the levirate obligation could and did extend to relatives other than the brother-in-law of the widow, in this case to the father-in-law.⁹⁷ For Beattie, however, this ought not to be allowed. He argues that, in the first place, Judah's intercourse with Tamar cannot be considered a marriage, since it is clearly stated that "he knew her no more" (v. 26), while the levirate law is equally clear that the $\square\square$ shall take his sister-in-law "as a wife" (Deut. 25.5). And, in the second place, he observes that Judah's vindication of Tamar's action is cast in relative, and not absolute, terms - "She is more righteous than I" (v. 26) - and there is no hint in the story that her actions were sanctioned by law or custom. His point is that Gen. 38 cannot be used as evidence for the view that the levirate obligation extended to relations of the deceased husband who were more distant than his brother(s).⁹⁸

Whatever the case may be, we can say that Tamar was looking not so much to perpetuate the name(s) of her first (and second) husband but, rather, that she was looking after herself, that is, she was trying to have a male child who would look after her in her old age. The fact is that she was sent away to her own family to be looked after (awaiting

⁹⁶Thompson, "Some Legal Problems in the Book of Ruth," 94.

⁹⁷H.H. Rowley. "The Marriage of Ruth" *Harvard Theological Review* 40 (1947): 80; Neufeld, *Ancient Hebrew Marriage Laws*, 36.

⁹⁸D.R.G. Beattie. "The Book of Ruth as Evidence for Israelite Legal Practice" *Vetus Testamentum* 24, 3 (July 1974), 260-261.

the last son of Judah), and so, it appears, she may not have been in dire economic needs. And although she did submit previously with Onan and was ready to do so again with Shelah, her determination, her planning, and the implementation of her plan, demonstrate that she was set on obtaining what she thought was hers by right. A question, therefore, begs to be asked: If not for immediate economic reason, why this strong desire and action? The only conceivable answer, it would seem, is that Tamar was trying to secure her own future, for her position in her father's house was welcomed only as long as he remained alive. No one else, it would appear, was looking after her interests as a widow and, therefore, by acting as she did, she ensured that she would be looked after in her old age.

Worth noting, but often forgotten for the most part by commentators, is the fact that Tamar may have been a Canaanite. This may have been more embarrassing to the rabbinical authorities than the fact the Judah slept with her and fathered a pair of sons by her, for "one of the great themes of the Hebrew Bible is the outright condemnation of marriage outside the Twelve Tribes of Israel, and the Canaanites are the most strictly forbidden of all prospective lovers and spouses."⁹⁹ However, the story of Tamar allows us to glimpse into the deadly peril that confronted women of the biblical era who were not under the mastery of a male, whether father or husband. She was, above all, "a woman whose will is so strong, whose passion burns so bright, that she writes herself into history through an act of illicit physical love."¹⁰⁰

⁹⁹ See Deut. 7.3. Jonathan Kirsch. *The Harlot by the Side of the Road - Forbidden Tales of the Bible* (New York, NY: Ballantine Books, 1997): 126.

¹⁰⁰ Kirsch, 125.

Furthermore, and more embarrassing for the rabbinical authorities, is the fact that Tamar does not disappear from the biblical narrative. Rather, she gives birth to twin boys, Perez and Zerah, and the Bible carefully notes that Perez was the progenitor of a long line of celebrated figures, including David, Solomon, and, according to the New Testament, Jesus of Nazareth. So "Tamar, the willful young woman who plays the harlot in order to seduce her own father-in-law, is the great-great-grandmother of kings, prophets, and the Christian Messiah."¹⁰¹

III. Widows Among the Weak

The formation of many laws concerning matters of charity stems from the same spirit of generosity which directed the formulation of some of the cultic laws. A typical feature of these "charity laws" is the mention of the alien, orphan and widow, always in that order,¹⁰² to whom are sometimes added the Levites or the poor.¹⁰³ This list of dependent members of society is also found in many of the cultic laws.¹⁰⁴ There, too, these people are always mentioned together, and always in the same order, "suggesting that the laws were formulated by the same hand."¹⁰⁵ Furthermore, the redactor also prefers to designate the widow, Levite

¹⁰¹Kirsch, 124.

¹⁰²For example, see Deut. 24.19, 20, 21.

¹⁰³Christiana Van Houten. *The Alien in Israelite Law*. Journal for the Study of the Old Testament, Supplement Series 107 (Sheffield, England: Sheffield Academic Press, 1991): 78.

¹⁰⁴See Deut. 14.29; 16.11, 14; 26.12.

¹⁰⁵Van Houten, 78.

and alien as being "in your gates" (בְּשַׁעְרֵי־בְּרִיתְךָ)¹⁰⁶, or "in your midst" (בְּתוֹכְךָ).¹⁰⁷

The protection of dependent members of society was formulated in laws addressed to the head of the household, as are all the laws. But what is significant is that the protection of the needy was not merely seen as an in-house requisite, completely under the jurisdiction of the paterfamilias, as was, for example, the arranging of marriages.¹⁰⁸ Rather, it extended to every member of that household. Furthermore, the laws did not distinguish between matters of charity and justice. Thus, because the harvest belongs to the Lord, and because He allows the landowner to go over the field only once, the widows, orphans and the poor are allowed to glean and to go over the field a second time. Accordingly, they, in fact, have as much right to their harvest as the landowner does to his.¹⁰⁹

A. Law Structure in Ancient Israel.

The laws, as we have them, are expressed in two distinct formulations: apodictic and casuistic. Both have been discussed extensively, and for the purpose of this research only a brief summary needs to be presented. The classic description of the apodictic form occurs in Alt's study¹¹⁰ and the most thorough overview of the

¹⁰⁶ Deut. 5.14; 14.21, 29; 16.11, 14; 24.14 (not quite parallel).

¹⁰⁷ Deut. 26.11, 12 (not quite parallel), and 31.12.

¹⁰⁸ Van Houten, 35.

¹⁰⁹ Van Houten, 79.

¹¹⁰ A. Alt. *Essays on Old Testament History and Religion*. R.A. Wilson, transl. (Oxford, England: Basil Blackwell, 1966): 79-132.

scholarship is found in S.M. Paul's monograph.¹¹¹ Apodictic laws are brief prohibitions characterized by a personal address. The grammatical construction often involves a verb preceded by the particle לֹא : a very forceful negative.¹¹² In addition, apodictic laws often occur in a series.¹¹³

For Alt, the annual covenant renewal ceremony was the context in which these laws were recited. This hypothesis assumes that Israel was organized as an amphictiony in the pre-monarchic period.¹¹⁴ However, the proclamation of these laws during a cultic ceremony does not necessarily require the existence of an amphictiony. While all scholars agree that the characteristics of apodictic law indicate that they were used in an oral setting, they are not agreed on the original *Sitz im Leben*. In addition, and more importantly, the apodictic form requires that a person speak for God.¹¹⁵ This reinforces the theory that the cultic setting was the most likely *Sitz im Leben*, with a priest as the most likely mouthpiece for God.¹¹⁶ Finally, because motive clauses are

¹¹¹ Shalom M. Paul. *Studies in the Book of the Covenant in the Light of Cuneiform and Biblical Law* (Leiden, The Netherland: E.J. Brill, 1970): 118-123.

¹¹² Van Houten, 47.

¹¹³ K. Koch. *The Growth of the Biblical Tradition: The Form-Critical Method*. S.M. Cupitt, transl. (New York, NY: Scribner's Books, 1969): 9-10.

¹¹⁴ See J. Kenneth Kuntz. *The People of Ancient Israel: An Introduction to Old Testament Literature, History, and Thought* (New York, NY: Harper & Row Publishers, 1974); see also Harry M. Orlinsky, "The Tribal System of Israel and Related Groups in the Period of the Judges" in *Studies and Essays in Honor of Abraham A. Neuman*. Meir Ben-Horin, et al., eds. (Leiden, The Netherlands: E.J. Brill, 1962): 375-387. Orlinsky believes that genuine tribal cooperation was stimulated solely in the case of a common enemy. The Israelite tribes were autonomous, and their actions were largely influenced by geographical conditions: "In those days there was no king in Israel; every man did what was right in his own eye" (Jg. 17.6 and 21.25). For a presentation of the amphictyony theory and its refutation see A.D.H. Mayes *Israel in the Period of the Judges* (Naperville, IL: SCM Press, 1974): 7-83.

¹¹⁵ Van Houten, 48.

¹¹⁶ Alt, *Essays on Old Testament History and Religion*, 125-129.

attached to these laws, their didactic function and cultic setting seem strengthened.¹¹⁷

Alt contends that apodictic law was unique to Israel.¹¹⁸ However, MacKenzie claims that the apodictic form occurs in Egyptian royal edicts and in the Code of Hammurabi.¹¹⁹ Although the form is similar, the content of Egyptian and Babylonian apodictic laws is very different from Old Testament apodictic law. Prior to MacKenzie, Mendenhall had pointed to the similarities between the laws of the Decalogue and Covenant Code and the Hittite treaties¹²⁰ and argued on that basis that Old Testament apodictic laws should be considered as stipulations of a covenant between Yahweh and his people, Israel. Koch, following Mendenhall, concluded that although the form is not identical, the Hittite treaties inspired it. But, what is unique to Israel is the tendency to form apodictic laws into a series.¹²¹

Gerstenberger proposed another thesis regarding the origin of apodictic laws. For him, these laws are parallel to wisdom maxims, both in their form and content.¹²² As an example he cites the negative prohibition found in Prov. 3.27-30, although the form is not strictly parallel, since the prohibition in Proverbs does not use the particle

¹¹⁷Van Houten, 48.

¹¹⁸Alt, *Essays on Old Testament History and Religion*, 103.

¹¹⁹R.A.F. MacKenzie. "The Formal Aspect of Ancient Near Eastern Law" in *The Seed of Wisdom*. W.S. McCullough, ed. (Toronto, ON: University of Toronto Press, 1964): 40-44. MacKenzie does not discuss the possible *Sitz im Leben* of the apodictic laws in the Old Testament, but assumes that they were heard by individual Israelites who were then held responsible for their own conduct.

¹²⁰G.E. Mendenhall. "Ancient Oriental and Biblical Law" *Biblical Archaeologist* 17 (1954): 26-46.

¹²¹Koch, *The Growth . . .*, 21.

¹²²Erhard Gerstenberger. "Covenant and Commandment" *Journal of Biblical Literature* 84, 1 (March 1965): 50-51.

כִּלְ, but לִלְ. He also argues that it is only in the wisdom literature that instruction on ethical matters can be found, and that clan instructions rather than covenant stipulation form the *Sitz im Leben* in which apodictic law originated.¹²³

As in all arguments, the evidence on both sides is suggestive but not conclusive. What can be said is that while aspects of apodictic law are analogous to laws found in extra-biblical literature, the particular combination of features found in the biblical collection has not, to date, been found elsewhere. No apodictic formulation regulating cultic, moral and civil affairs, and which tend to occur in series, have been found in any other ancient Mesopotamian text. Further, it seems very probable that these laws were used in a cultic setting in which the people of Israel were addressed by a speaker representing Yahweh. But, most importantly, it seems apparent that these laws were not only to be known and followed, but also, to some extent, understood and internalized. The motivation clauses to obey these laws, which do not specify punishment, indicate that they should be observed as a result of choosing what is right and proper.¹²⁴

When we turn our attention to the laws dealing with aliens, widows and orphans we discover that they most probably belonged to a later stage in the development of the Covenant Code (Ex. 20.23-23.33), and that they show signs of deuteronomistic redaction. Although the widow, orphan and

¹²³Gerstenberger, 51.

¹²⁴Van Houten, 49-50.

alien are mentioned in the Covenant Code, they are mentioned in separate laws. For example,

Ex. 22.21 (Hebrew v. 20) deals with the alien

וְגֵר לֹא-תוֹנֶה וְלֹא תִלְחָצְנֵנוּ כִּי-גֵרִים הֵייתֶם בְּאֶרֶץ מִצְרָיִם

Ex. 22.22 (Hebrew v. 21) deals with the widow and the orphan

כֹּל-אֶלְמָנָה וַיְתוֹם לֹא תַעֲנוּן

The needy are mentioned in Ex. 23.11

וְהַשְּׂבִיעֹת תִּשְׁמַטְנָה וְנִשְׁתָּהּ וְאָכְלוּ אֶבְיֹנֵי עַמֶּךָ וַיְתָרְם תֹּאכַל חֵיטְ הַשָּׂדֶה
בְּיַמֵּי תַעֲשֶׂה לְכַרְמֶךָ לְזִיתֶךָ

The law regulating the fallow year, followed in Ex. 23.12 by the Sabbath law which includes the alien

שֵׁשֶׁת יָמִים תַּעֲשֶׂה מַעֲשֶׂיךָ וּבַיּוֹם הַשְּׂבִיעִי תִשְׁבֹּת לַמַּעַן יָנוּחַ שׁוֹרְךָ וַחֲמֹרְךָ
וַיִּנְפֹּשׂ בֶּן-אִמְתֶּךָ וְהַגֵּר

The fixed formula, "alien, widow and orphan," so prevalent in and typical of Deuteronomy, does not occur here, which has led Lohfink to argue that the laws pertaining to the poor in the Covenant Code are prior to the laws of Deuteronomy.¹²⁵

Apodictic law promulgated or recited in the context of the cult did not function as a modern law code. What this means is that we cannot assume that when the law prohibits the Israelites from oppressing the alien, the widow and the orphan, that Israelites disobeying this law would be punished. Rather, "these laws present the Israelites with

¹²⁵ See Norbert Lohfink. "The Option for the Poor: Views of an Old Testament Scholar," address delivered at the Catholic Biblical Association Annual Meeting (1990): 7-9, where he clearly sets out the many instances in which Deuteronomic laws are dependent on those in the Book of the Covenant. See also S.R. Driver. *A Critical and Exegetical Commentary on Deuteronomy*. The International Critical Commentary, 3rd ed. (Edinburgh, Scotland: T. & T. Clark, 1902, 1978): iv-ix.

normative conduct. They attempt to persuade them to behave in this gracious and charitable way by their own choice."¹²⁶ Furthermore, it is difficult to reconstruct the judicial procedures of the pre-monarchic period because there are few biblical sources, and scholars do not agree about the structure of the social system. Thus Wilson based his description of the legal system on the premise that the basic social unit at this time was the extended family (בֵּית־אָב), with judicial authority residing with the patriarch, who had virtually absolute control.¹²⁷ When disputes involved extended families the proceedings took place at the level of the clan (כִּשְׁפָחָה) at the village gate, where the elders gathered to hear the case.¹²⁸ Presumably, argues Wilson, this was the level at which the laws of the Book of the Covenant functioned. It would be at this court that the rights of the needy (i.e., alien, widow, orphan and Levites) to a fair hearing would be upheld.¹²⁹

Injunctions are given to protect the rights of the alien, widow, orphan, Levite and the poor, and severe punishments are pronounced against those who abuse them. The vertical line in these commands is drawn and closely linked up with the horizontal responsibility to the poor.¹³⁰ Let us, therefore, look more closely at the pertinent laws dealing with the protection of the needy, and that of the widows in

¹²⁶ Van Houten, 51-52.

¹²⁷ Robert R. Wilson. "Enforcing the Covenant: The Mechanism of Judicial Authority in Early Israel" in *The Quest for the Kingdom of God: Essays in Honor of George E. Mendenhall*. H.B. Huffmon, F.A. Spina and A.R.W. Green, eds. (Winona Lake, IN: Eisenbrauns, 1983): 64.

¹²⁸ Wilson, "Enforcing the Covenant," 64.

¹²⁹ Wilson, "Enforcing the Covenant," 64-65.

¹³⁰ F. Charles Fensham. "Widow, Orphan, and the Poor in Ancient Near Eastern Legal and Wisdom Literature" *Journal of Near Eastern Studies* 21 (1962): 135.

particular. The order in which these laws are presented here follows the order of the biblical text; it does not reflect a chronological progression.

B. Exodus 22.21-23:

You shall not afflict any widow or orphan.

If you afflict him at all, and if he does cry out to me, I will surely hear his cry

and my anger will be kindled, and I will kill you with the sword; and your wives shall become widows and your children fatherless.

These few verses are part of what is commonly known as the "Book of the Covenant" or the "Covenant Code." The following general outline may help in providing the larger perspective of that particular section of the book of Exodus:

1. 20.22-26 = Altar laws
2. 21.1-11 = Slave laws
3. 21.12-17 = Capital offenses
4. 21.18-36 = Laws regulating bodily injuries
5. 21.37-22.16 (Engl. 22.1-17) = Damage to property
6. 22.17-30 (Engl. 22.18-31) = Miscellaneous religious and social stipulations
7. 23.1-9 = Laws regulating court procedure
8. 23. 10-19 = Cultic calendar
9. 23.20-23 - Parenetic epilogue¹³¹

The context of the verses which interest us (Ex. 22.21-27) deals with various forms of oppression against the poor, the widow, the orphan

¹³¹Brevard S. Childs. *The Book of Exodus* (Philadelphia, PA: The Westminster Press, 1974): 460.

and the alien. These were people who had few or no natural protectors and who needed to be protected. Like the sojourner or resident alien of v. 21, the widows and orphans (vv. 22-24) were to be protected.¹³² The stranger (גֵר) was vulnerable to wrongdoing because he lacked the protection of his clan. The widow and the orphan were exposed to violence without the support of husband or father.¹³³ Thus, according to v. 22 (Heb. v. 21), "even widows and orphans enjoy the protection of apodeictic [*sic*] law, as they lack the legal protection of husband and father and are therefore liable to 'affliction', as for example the brutal exploitation of their capacity for work."¹³⁴

What can also be seen in these verses is a shift of emphasis. First, we have God Himself as the special protector and advocate of these underprivileged people; and second, we have a shift to a second-person plural, indicating very strongly that the whole community of Israel was deemed responsible for the well-being of the needy.¹³⁵ God emphatically promises assistance to the widows and orphans. He will hear the cry of those who are unjustly oppressed and will punish the evildoers in accordance with the maxim of the *lex talionis*: "your wives shall become widows and your children fatherless" (v. 24).¹³⁶ Yet, the fact that such a law needed to be articulated indicates that, although

¹³² See Lev. 19.9-10; 23.11; Deut. 14.21; 16.11, 14; 24.19-21; 26.12-13; Ps. 94.6; Is. 1.23; 10.2; Jer. 7.3-6; 22.3; Zech. 7.10; Mal. 3.5; Matt. 23.14 (NIV mg.). See Walter C. Kaiser Jr. *Exodus. The Expositor's Bible Commentary*, vol. 2. Frank Gabellein, gen. ed. (Grand Rapids, MI: Zondervan Pub. House, 1990). Kaiser adds, 440: "There are many other verses in the wisdom books of the OT, but it was the prophets who chided Israel for their neglect in this area of oppressing the poor and the weak."

¹³³ Childs, *Exodus*, 460.

¹³⁴ Martin Noth. *Exodus*. J.S. Bowden, transl. (Philadelphia, PA: The Westminster Press, 1962): 186.

¹³⁵ Kaiser, *Exodus*, 439-440.

¹³⁶ Noth, *Exodus*, 186; Childs, *Exodus*, 460.

women became free agents upon widowhood, this did not guarantee them freedom from the harshness of life. Lacking a protector, they were subject to abuse and exploitation. Their economic situation being altered because of their new social status, i.e., widowhood, required that someone take care of them. But woe to the abusers if God had to become the protector of the widow!

C. Leviticus 22.13:

No layman (stranger), however, is to eat of the holy [gift]; a sojourner with the priest or a hired man shall not eat of the holy [gift].

But if a priest buys a slave (soul) as his property with his money, he (that one) may eat of it, and those who are born in his house may eat of his food (bread).

And if a priest's daughter is married to a layman (stranger), she shall not eat of the offering (heave offering) of the [gifts].

But if a priest's daughter becomes a widow or divorced, and has no child and returns to her father's house as in her youth, she shall eat of her father's food (bread); but no layman (stranger) shall eat of it.

But if a man eats a holy [gift] unintentionally, then he shall add to it a fifth of it and shall give the holy [gift] to the priest.

And they shall not profane the holy [gifts] of the sons of Israel which they offer to the Lord,

and [so] cause them to bear punishment (iniquity requiring a guilt offering) for guilt by eating their holy [gifts]; for I am the Lord who sanctifies them.

Verse 13 is part of a section in Leviticus (22.10-16) which describes the parts of the sacrifices and other offerings assigned to the priests. Because the priests (who are all Levites) had no land of

their own to work, the tithes of the people constituted their income. As a matter of course, the priests' families also ate of the holy things, the offerings which had been consecrated to God.¹³⁷ However, in such a close-knit society which, as we have seen, was strongly patriarchal and endogamous, there was a need to specify who belonged to the priests' family and, therefore, who could eat of these holy things. Thus we find that an outsider (v. 10), that is, someone who is not of priestly stock, could not eat the holy food, unless he had been incorporated into the priest's family. Living with the priest or working for him (v. 11) was not sufficient either. Slaves and their children, on the other hand, did count as members of the family (v. 11), and therefore could eat of what had been sanctified.¹³⁸ This is logical, since slaves had nowhere else to turn to get sustenance. It goes without saying that the priest's own children were entitled to eat priestly food. And, while his grown-up sons are not mentioned, they would have been entitled automatically to priestly dues when they became priests in their own right.¹³⁹ As regards a priest's daughter, she too was entitled to priestly food until she married, at which time she was regarded as belonging to her husband's family (v. 12). If her husband was an "outsider," that is, not a priest, she would no longer enjoy priestly food. If that man subsequently died or divorced her, and the woman had no children who could support her, she could return to her paternal home and enjoy priestly food again.¹⁴⁰

¹³⁷Gordon J. Wenham. *The Book of Leviticus* (Grand Rapids: Wm. B. Eerdmans Pub. Co., 1979): 294.

¹³⁸Wenham, *Leviticus*, 295.

¹³⁹Wenham, *Leviticus*, 295.

¹⁴⁰Wenham, *Leviticus*, 295.

What we can also see in this particular law, although it is not its focus, is that a widow or a divorced woman was expected to be taken care of by her children, if she had had any. A return to her father's house was her last option, and took her back "as in her youth," that is, to dependency on her father in all aspects of life. As in her youth, her father became her protector and supplier of her daily necessities.

Another thing to note in this verse is that one of the conditions under which a priest daughter could come back to her paternal home, besides being widowed or divorced, is that she had to have no child. Can we assume, therefore, that having a child disqualified her from returning to her father's house? While the text does not explicitly say so, this clause seems very reminiscent of the condition found in the law of the levirate.¹⁴¹ Should this be the case, this statement confirms that a woman who had a child was not classified as a true widow, since she had a child who, potentially, would look after her in her old age.

D. Numbers 30.9-12:

But the vow of a widow or of a divorced woman, everything by which she has bound herself, shall stand against her.

However, if she vowed in her husband's house, or bound herself by an obligation with an oath,

and her husband heard it, but said nothing to her and did not forbid her, then all her vows shall stand, and every obligation by which she bound herself shall stand.

But if her husband indeed annuls them on the day he heard them, then whatever proceeds out of her lips concerning her vows or

¹⁴¹ Deut. 25.5.

concerning the obligation of herself, shall not stand; her husband has annulled them, and the Lord will forgive her.

This vow (v. 9) is part of a long speech given by Moses to the children of Israel while they were in the wilderness.¹⁴² Among the various rules and regulations concerning the taking of vows, we find that a widow, or a divorced woman, was her own agent in the taking of vows. Both categories of women were no longer in the household of their respective fathers, nor were they under the control of their husbands. Both women had been married and, therefore, were no longer under the protection of their father, unless they were to seek that again.¹⁴³ Because they were the freest women around, having been married, but no longer under the control of a male, either a father or, in this instance, a husband, these women were able to negotiate contracts, take vows, make promises and "to function like any man in society."¹⁴⁴ This does not mean that they could do anything they pleased. Certain restrictions were placed on them just by virtue of their gender and their status. Yet they could make vows and be held responsible for them.

While this passage does not explicitly address the economic status of a widow, or a divorced person, it does show that women in either of these categories were held responsible for the promises, or vows, they made.

¹⁴²Num. 30.1-16.

¹⁴³Ronald B. Allen. "נָשִׂיא" in *Theological Wordbook of the Old Testament*. vol. 2. R. Laird Harris, Gleason L. Archer and Bruce K. Waltke, eds. (Chicago, IL: Moody Press, 1980): 960.

¹⁴⁴Allen, 960.

E. Deuteronomy 10.18¹⁴⁵:

And now, Israel, what does the Lord your God require from you, but to fear (reverence) the Lord your God, to walk in all his ways and love Him, and to serve the Lord your God with all your heart and with all your soul,

and to keep the Lord's commandments and His statutes which I am commanding you today for your good?

Behold, to the Lord your God belong heaven and the highest heavens, the earth and all that is in it.

Yet on your fathers did the Lord set His affection to love them, and He chose their descendants after them, even you above all peoples, as it is this day.

Circumcise then your heart (the foreskin of your heart), and stiffen no more.

For the Lord your God is the God of gods and the Lord of lords, the great, the mighty, and the awesome God who does not show partiality, nor take a bribe.

He executes justice for the orphan and the widow, and shows His love for the alien by giving him food and clothing.

So show your love for the alien, for you were aliens in the land of Egypt.

You shall fear the Lord your God; you shall serve Him and cling to Him, and you shall swear by His name.

A special interest for the fate of the widow and orphan can be seen in Deuteronomy. The starting point is found in this passage¹⁴⁶ where the protection of the weak is linked with the Supreme Judge, Yahweh, Who is not willing to accept bribery, but is willing to do justice to the widow, orphan and stranger. From this text stem all the later stipulations regarding the needy.

¹⁴⁵More will be said about date of composition, authorship, *Sitz im Leben*, etc. of Deuteronomy in our analysis of Deut. 25.5-10.

¹⁴⁶Deut. 10.12-21.

God shows no partiality and cannot be bribed. As God is, so should His people be also. All that He requires of them is "to fear (reverence) the Lord your God, to walk in all His ways and love Him, and to serve the Lord your God with all your heart and with all your soul, and to keep the Lord's commandments and His statutes which I am commanding you today for your good" (vv. 12-13). He is their model and His example is to be followed by His people. Because they were slaves in Egypt, and therefore had no land, rights or someone to speak on their behalf, so too they have to remember the widows, orphans and strangers, for they also have no security or protector.

The topic of the present passage is to illustrate the character of God and the implication of that character for the life of man. More detailed legislations concerning orphans, widows and aliens are found in Deut. 24.17-22. But here we find God as the "one enacting justice for the orphan and the widow - that is to say, God had particular concern that those in the community whose social and economic status was not secure should receive just and proper treatment."¹⁴⁷ It also points to the necessity for God to intervene and apply justice on behalf of the widows and orphans. Why would this be the case? Verse 16 seems to indicate that there were some abuses going on. The text does not give details, but, as it reads, "*Circumcise then your heart (the foreskin of your heart), and stiffen no more,*" [emphasis are this author's], a call to a change of action towards the orphans and widows seems to be called for.

¹⁴⁷Peter C. Craigie. *The Book of Deuteronomy. The International Commentary on the Old Testament* (Grand Rapids, MI: Wm. B. Eerdmans Pub. Co., 1976): 206.

Furthermore, this whole passage is reminiscent of Jesus' reply when asked which is the greatest commandment,¹⁴⁸ to which He replied, "Love the Lord your God with all your heart and with all your soul and with all your mind. This is the first and the greatest commandment. And the second is like it: 'Love your neighbor as yourself. All the Law and the Prophets hang on these two commandments."¹⁴⁹

F. Deuteronomy 14.22-27, 14.28-29 and 26.12-13:

Both Deut. 14.22-29 and 26.12-13 contain laws regulating the giving of the tithe. Because of their similarity in theme and function they need to be looked at together.

Laws regulating the tithe are found in Deuteronomy 14.22-27, 14.28-29 and Deut. 26.12-15, where we read that a portion of the tithe is to be given over to those without land of their own. The list of people who are to receive the tithe of the third year is almost identical in the three places where it occurs¹⁵⁰ and includes the Levite, the alien, the fatherless and the widow, in that order. "The only difference between the lists is that the one in Deut 14.29 is more expansive. The Levite and widow are described there, and simply listed in Deut. 26.12, 13."¹⁵¹ What, therefore, were the tithe laws and in which context(s) were they to be applied?

¹⁴⁸Matt. 22.36.

¹⁴⁹Matt. 22.37-40 (NIV).

¹⁵⁰Deut. 14.29; 26.12, 13.

¹⁵¹Van Houten, 83.

Tithing laws have various contexts, and here we are given but a small glimpse of how involved this system of support for the Levites and other needy people was in its administration. In Deut. 14 the tithe law falls into two paragraphs: the first (Deut. 14.22-27) deals with the yearly tithe, and the second (Deut. 14.28-29) with the triennial tithe.

The first law, found in verse 22, simply sets the tone for the passage, declaring:

You shall surely tithe all the produce from what you sow, which comes out of the field every year.

And you shall eat in the presence of the Lord your God at the place where he chooses to establish His name, the tithe of your grain, your new wine, your oil, and the firstborn of your herd and your flock, in order that you may learn to fear the Lord your God always.

And if the distance is so great for you that you are not able to bring [the tithe], since the place where the Lord your God chooses to set His name is too far away from you when the Lord your God blesses you,

then you shall exchange [it] for money, and bind the money in your hand and go to the place which the Lord your God chooses.

And you may spend the money for whatever your heart desires, for oxen, or sheep, or wine, or strong drink, or whatever your heart desires; and there you shall eat in the presence of the Lord your God and rejoice, you and your household.

Also you shall not neglect the Levite who is in your town (gates), for he has no portion or inheritance among you.

The second law, found in Deut. 14.28-29, specifies that the tithe is to be stored in the towns and distributed among the Levite, alien, orphan and widow. It reads:

At the end of every third year you shall bring out all the tithes of your produce in that year, and shall deposit it in your town (gates).

And the Levite, because he has no portion or inheritance among you, and the alien, the orphan (fatherless) and the widow who are in your town (gates), shall come and eat and be satisfied, in order that the Lord your God may bless you in all the work of your hand which you do.

The connection between these two laws is clear. The first one reforms the law of tithing in such a way as to allow the tithe to be brought to a central sanctuary, ending with an admonition not to neglect the Levite.¹⁵² The second paragraph reads as an addendum which legislates more precisely for the care of the Levite and the other landless groups. This tithe, commentators agree, should not be seen as an additional tithe. Its intention is to put the tithe of the third year to a different use.¹⁵³ It is evident that this last paragraph demonstrates the concern of the Deuteronomic law to create a system of support for those who are vulnerable. It is this latter tithe that is to be stored in the towns and distributed to the poor. Further, this last paragraph once again shows the concern of the Deuteronomic law to create a system of support for those who are vulnerable.

We again have two paragraphs in Deut. 26: the first (Deut. 26.1-11) deals with offering up the first fruits, and the second (Deut. 26.12-15) with the triennial tithe. Once more, it is this triennial tithe which is

¹⁵²Mayes, *Deuteronomy*, 246.

¹⁵³Van Houten, 84.

to be set aside for the needy. This triennial tithe, commentators agree, should not be seen as an additional tithe. Its intention was to put the tithe of the third year to a different use.¹⁵⁴ The purpose of the first paragraph of Deut. 26 (vv. 1-11) is to instruct the Israelites concerning the ceremony of the first fruits. Its second paragraph (vv. 12-15) expands and clarifies the nature of the triennial tithe. It is most probable that the tithe laws of Deut. 14 form the background for this, especially since the list of recipients is exactly the same, and in the same order.¹⁵⁵ This second law reads:

When you have finished paying all the tithe (tithing) of your increase in the third year, the year of tithing, then you shall give it to the Levite, to the stranger, to the orphan (fatherless) and to the widow, that they may eat in your towns (gates), and be satisfied.

And you shall say before the Lord your God, 'I have removed the sacred portion from my house, and also have given it to the Levite and the alien, the orphan (fatherless) and the widow, according to all Thy commandments which Thou hast commanded me; I have not transgressed or forgotten any of Thy commandments.'

In both Deut. 14 and Deut. 26 a portion of the tithe was to be given over to those without land of their own. These landless people included the Levite, the alien, the fatherless and the widow – in that order. The only difference between the lists found in these two laws is that the one in Deut 14.29 is more expansive, describing the Levite and widow, while they are simply listed in Deut. 26.12-13.¹⁵⁶

¹⁵⁴Van Houten, 84.

¹⁵⁵Van Houten, 84-85.

¹⁵⁶Van Houten, 83.

The special concerns of the author of Deuteronomy appear quite clear in these formulations of the tithing law.¹⁵⁷ A strong didactic interest in formulating the tithe law seems evident. Thus, in Deut. 14.23 the rationale given is "in order that you may learn to fear the Lord your God always," while in Deut. 26.13, the Israelite is to say that he has not turned aside nor forgotten any of the commands of the Lord. This, argues Van Houten, accords with the overall thrust of the book, since Deuteronomy is cast as a speech of Moses recollecting and teaching in preparation for life in the Promised Land.¹⁵⁸

G. Deuteronomy 16.11:

The tithe laws and the ceremonies of First Fruits, the Feast of Weeks and the Feast of Booths, also illustrate the eating theme. Elsewhere in Deuteronomy, eating goes hand in hand with rejoicing before the Lord.¹⁵⁹ It serves, in the cultic sphere of life, to remind the Israelites that God has brought them to a land of plenty. Eating the tithe is a feature of Deuteronomy's tithe law which is not found in the Priestly laws. While this could be considered a conflict between the two, it is very possible that the laws are complementary. It is doubtful that the entire tithe could have been eaten as a festal meal and, therefore, it has been proposed that some was eaten, while most was handed over to the priests and needy at the sanctuary.¹⁶⁰ Rejoicing because of the generosity of the Lord, the Israelites were to respond

¹⁵⁷See McConville, *Law and Theology*, 78-86.

¹⁵⁸Van Houten, 85.

¹⁵⁹Deuteronomy 16.

¹⁶⁰J.G. McConville. *Law and Theology in Deuteronomy* (Sheffield, England: Sheffield Academic Press, 1984): 77. See also Mayes, *Deuteronomy*, 245 and Van Houten, 85-86.

with generosity. God's continuous generosity in His treatment of the Israelites would depend upon their charity towards those who had nothing.¹⁶¹ Thus, in these festal instances, rejoicing because of the blessings of God involved sharing the gifts of God with the Levite, the poor and the alien.¹⁶²

You shall count seven weeks for yourself; you shall begin to count seven weeks from the time you begin to put the sickle to the standing grain.

Then you shall celebrate (perform) the Feast of Weeks to the Lord your God with a tribute of a freewill offering of your hand, which you shall give just as the Lord your God blesses you;

and you shall rejoice before the Lord your God, you and your son and your daughter and your male and female servants and the Levite who is in your town (gates); and the stranger and the orphan (fatherless) and the widow who are in your midst, in the place where the Lord your God chooses to establish his name.

And you shall remember that you were slaves in Egypt, and you shall be careful to observe these statutes.

You shall celebrate the Feast of Booths seven days after you have gathered in from your threshing floor and your wine vat;

and you shall rejoice in your feast, you and your son and your daughter and your male and female servants and the Levite and the stranger and the orphan (fatherless) and the widow who are in your towns (gates).

Seven days you shall celebrate a feast to the Lord your God in the place which the Lord chooses, because the Lord your God will bless you in all your produce and in all the work of your hands, so that you shall be altogether joyful.

¹⁶¹See Deut. 14.29b; 26.15.

¹⁶²Van Houten, 86.

Deuteronomy alone makes a point to include a lengthy list of participants for these festivals.¹⁶³ It makes a clear distinction between Passover on the one hand and the Feasts of Weeks and Booths on the other which is not made in the other law codes. In the Passover legislation no mention is made of the participants, while the Feasts of Weeks and Booths specify those who are to be included.¹⁶⁴ The list of participants for both these feasts is strictly parallel, the only difference being that in Deut. 16.11 the Levites are described as "those living in your towns," while in Deut. 16.14 there is no modifying phrase. For both feasts the participants are "you, your son, your daughter, your menservants, your maidservants, the Levite, the alien, the fatherless and the widow."

Both these feasts were to celebrate the gathering in of the harvests, the Feast of Weeks that of the spring harvest, and the Feast of Booths that of the fall harvest. These, therefore, were times of rejoicing for God's blessing on his people. The tangible way the Israelites were to prove that understanding was for them to embrace all those who belonged to the community of Israel, including those who were landless, and therefore had no harvest of their own (except that which had been gleaned after the farmer went over his field once). The similarities between these two feasts demonstrate that the author understood them as having essentially the same meaning: as the Lord had been generous with the Israelites, they were to respond with joy and generosity.¹⁶⁵ Thus, these feasts bring out Deuteronomy's themes of

¹⁶³Deut. 16.11-14.

¹⁶⁴Van Houten, 88-89.

¹⁶⁵Van Houten, 90.

blessing (16.10, 15), rejoicing (16.11, 15), concern for those who are vulnerable (16.11, 14) and to contrast their life in the promised land with their life in Egypt (16.12) are brought out.¹⁶⁶

As noted above, the needy, among whom we find the widow, were not included in the Passover regulations. Their absence from the list of participants is not the only difference between the Feasts of Weeks and Booths on the one hand and the Passover on the other. The terminology of celebrating and rejoicing is also absent. Instead, the Israelites were to observe the month of Abib (16.1) and keep the Passover (16.1) by sacrificing, eating, holding an assembly and ceasing from work. Many motivation clauses are attached to these instructions, and each involves tying the Passover ritual to the events of the Exodus. In all this, the reason for the omission of the list of participants lies in the significance of the Exodus event in the theology of Deuteronomy.

For Ancient Israel, the most important historical event was the Exodus. It was the event by which God delivered them and made them His own people. It was the act through which they gained their identity as His chosen people and were demarcated from all other peoples. Therefore the festival which commemorated their founding history was not characterized as an occasion of joy and celebration. It was an occasion for observing, keeping, remembering, and holding assemblies. Because of its nature, it was not appropriate to make a point of including everyone. On the other hand, the expansive list of participants in the Feasts of Weeks and Booths was part and parcel of the spirit of

¹⁶⁶McConville, *Law and Theology*, 111.

generosity which the author saw as characteristic of these feasts. Therefore, the inclusion of the needy in the Feasts of Weeks and Booths, and the silence concerning these participants in the Passover regulations can be explained by the author's presentation of the meaning of these occasions.¹⁶⁷ Thus,

When celebrating the abundant gifts received from the Lord, it is appropriate to respond with rejoicing and generosity expressed by including all members of society. However, when remembering the event by which God created the Israelites as a people separate from others, then generosity is not at the heart of the occasion. These people may still have been present, but it was not in keeping with the meaning of Passover to explicitly name them.¹⁶⁸

H. Deuteronomy 24.17-22:

Deuteronomy is well known for its humanitarian concern for the marginalized. This is indicative not only of the book's vision for the people of God, but also of the existence of a well-to-do upper class and an often impoverished lower class. This concern for the marginalized is expressed through various laws requiring social justice. Thus we read:

You shall not oppress a hired servant who is poor and needy, whether he is one of your countrymen or one of your aliens who is in your land in [one of your] towns.

.

You shall not pervert the justice due (of) an alien or an orphan (fatherless), nor take a widow's garment in pledge.

¹⁶⁷Van Houten, 90.

¹⁶⁸Van Houten, 91.

But you shall remember that you were slaves in Egypt, and that the Lord your God redeemed you from there; therefore I am commanding you to do this thing.

When you reap your harvest in your field and have forgotten a sheaf in the field, you shall not go back to get it; it shall be for the alien, for the orphan (fatherless), and for the widow, in order that the Lord your God may bless you in all the work of your hands.

When you beat your olive tree, you shall not go over the boughs again (after yourself); it shall be for the alien, for the orphan (fatherless), and for the widow.

When you gather the grapes of your vineyard, you shall not go over it again (glean it after yourself); it shall be for the alien, for the orphan (fatherless), and for the widow.

And you shall remember that you were slaves in the land of Egypt; therefore I am commanding you to do this thing.

The section of the law code in which these laws are found, Deut. 24.5-25.4, is characterized by its concern for the needy. Yet within this section are laws which do not conform to that concern.¹⁶⁹ According to Mayes it is more appropriate to describe this group of laws as a miscellaneous collection which begins in Deut. 23.14 and continues to 25.19, in which the order of the laws is not logical but is brought together by a common subject,¹⁷⁰ or by a catchword connection.¹⁷¹ Also, the forms employed within this section are varied. Apodictic commands are often followed by motivating clauses,¹⁷² and casuistically formulated laws are followed by motivation clauses using the personal

¹⁶⁹ See, for example, Deut 24.16.

¹⁷⁰ Deut. 24.1-4, 5 = a man taking a wife.

¹⁷¹ Deut. 24.15, 16 = sin. See Mayes, *Deuteronomy*, 323.

¹⁷² See Deut. 24.14, 17.

form of address.¹⁷³ Van Houten has noted that most of the laws appear to be ancient, and many have parallels in the Book of the Covenant.¹⁷⁴

The goal of the first of these five laws, Deut. 24.14, is to protect the hired man (שִׂכִּיר), whether he is a fellow Israelite or an alien.¹⁷⁵ Verse 15 specifies the sort of oppression that is meant. The law requires that the employer not withhold wages and that the laborers be paid on a daily basis. It seems evident that the author of Deuteronomy has connected this law to the preceding one in a number of ways; just as a cloak is to be returned to the borrower before sunset in v. 13, so the wages are to be paid before sunset in v. 15. Van Houten has rightly observed that the motivation clauses attached to these laws also show that the author saw them as related. The motivation clause for the lender in vv. 10-13 states that the borrower will thank him, and that it will be considered a righteous act. The motivation clause of v. 15 makes the same point by stating it negatively.¹⁷⁶ Thus the employer must pay his laborers daily, lest they cry out against him and he be guilty of sin. Evidently, the purpose of these laws is to protect the dignity of the poor and to prevent them from becoming further impoverished. "They further Deuteronomy's goal of creating an economic system which supports those on the fringes - those who have no land of their own."¹⁷⁷

¹⁷³ See Deut. 24.1-4.

¹⁷⁴ Van Houten, 93.

¹⁷⁵ The NRSV makes explicit what sort of oppression is being referred to in its translation of "oppress" in v. 14 as "withhold the wages."

¹⁷⁶ Van Houten, 94.

¹⁷⁷ Van Houten, 94.

The four other references to the alien in this section are clustered together in Deut. 24.17-21. All deal with the same three classes of dependent people: aliens, the fatherless and widows. This grouping of alien, fatherless and widow is unique to Deuteronomy. The Covenant Code does mention them in two successive laws (Ex. 22.21, 22), but the Priestly Code does not group these classes of people together. The only other places where the terms widow, fatherless and alien are found together are in Ps. 94.6 and Jer. 22.3. While we cannot conclude that the theme of justice for the socially weak is unique to Deuteronomy, or even to the Israelite legal traditions, the consistent use of the terms "alien, fatherless and widow" is typical of Deuteronomy.¹⁷⁸

However, according to Lohfink's own research, this grouping is not a grouping of the poor. He remarks that although in the Priestly law the alien is twice grouped with the poor (Lev. 19.10; 23.22), in Deuteronomy this never occurs. He goes on to demonstrate that Deuteronomy has changed the semantic field and thus the poor are a group distinct from the widow, orphan and alien. The laws dealing with the poor in Deuteronomy are concerned only with indebtedness and seek to return those Israelites who are losing, or have lost, their land to ownership through laws regulating the Sabbath year and debt servitude. On the other hand, laws dealing with the alien, widow and orphan, and sometimes slaves and Levites, have a different thrust. Their purpose is to provide for the economic maintenance of groups of people who have no land. If

¹⁷⁸ See Deut. 14.29; 16.11, 14; 24.17, 19, 20, 21; 26.12, 13; 27.19.

such a system worked, members of these groups would not be poor.¹⁷⁹ It thus becomes evident that these deuteronomic laws demonstrate the concern of the author for marginalized members of society.¹⁸⁰

To demonstrate that the laws dealing with the poor have a different group of people in mind from the laws dealing with the widow, stranger and orphan, Lohfink proposed the following tables:

		Alien	Widow	Orphan
Deut. 14.29	Tithe	x	x	x
Deut. 16.11	Weeks	x	x	x
Deut. 16.14	Booths	x	x	x
Deut. 24.19	Harvest	x	x	x
Deut. 24.20	Harvest	x	x	x
Deut. 24.21	Harvest	x	x	x
Deut. 26.11	Tithe	x		
Deut. 26.12f.	Tithe	x	x	x

	Poor and needy
Deut. 15.1-6	Fallow year: no exaction of debts
Deut. 15.7-11	Loans without interest
Deut. 15.12-18	Fallow year: liberation of slaves
Deut. 24.10-13	Pledge of a poor person
Deut. 24.14-15	Daily pay for a poor day-laborer

In v. 17 we have two different injunctions. The first one concerns only the stranger and the orphan. It requires that they be treated fairly and not abused because of their status. The second admonishes not to take the garment of a widow as a pledge. Contrary to vv. 12-13 which specify that a poor man's coat may be taken as a pledge,¹⁸¹ but must be returned for the night so he may sleep in it, a widow's garment, or

¹⁷⁹ Norbert Lohfink. "The Option for the Poor: Views of an Old Testament Scholar," address delivered at the Catholic Biblical Association Annual Meeting, 1990: 14-16.

¹⁸⁰ Van Houten, 96.

¹⁸¹ Even an interest-free loan apparently required some type of pledge or security; see Ex. 22.26-27.

coat, could not be used as collateral. A very poor man would have only his blanket-like piece of clothing, used as a cloak by day and as a bed covering by night, to offer as pledge.¹⁸² A widow, on the other hand, could not be made to relinquish this garment. The reason why is not specified, and one may only guess that as there is concern for the poor man to save face (vv. 12-13), the same would be true for a widow. More probably, the woman may not even have been in a position to repay any loan she may have incurred and, therefore, her dignity was to be preserved. Kaiser even suggests that "this cloak or poncho, which doubled as a blanket at night, was needed when evening came; otherwise the cold would be as vexing as the requiring of interest."¹⁸³

In vv. 19-22 provisions are made for feeding the underprivileged. Any sheaf left in the fields by mistake during the harvest was to become the proper possession of aliens, orphans and widows, and would not be considered theft.¹⁸⁴ Some generous farmers might even contrive to "forget" a few sheaves. The same was to be done with fruit trees. The example given to us is that of olive trees. These would be beaten so that olives fell to the ground, generally onto some kind of cloth, and could then be collected. The farmer was not to check every branch and make sure it was stripped bare of fruit. What fruit remained was left for the aliens, orphans and widows. A similar procedure was to be employed when grapes were gathered from the vine.¹⁸⁵

¹⁸²Craigie, 308.

¹⁸³Kaiser, *Exodus*, 440. See CH §114-6 and MAL §§39, 44 and 48.

¹⁸⁴See Ruth 2.

¹⁸⁵Craigie, 311.

In this legislation we see expressed the care that was to be extended to all members of the covenant community. A strong anticipation of the Promised Land soon to be possessed by the Israelite is seen throughout the book of Deuteronomy. Part of that anticipation was the knowledge that the majority of Israelite families would be allotted a portion of the land from which they would harvest various crops and fruits. However, among them there were some who would not be landowners and who could easily feel left out of the life of the community in that they did not share directly in the possession of the land promised and given by God. These were the aliens, the orphans, the widows and the Levites. Various legislations deal with the care of the Levites, but here the admonition makes sure that resident aliens, orphans and widows, though not owning land for themselves, will nevertheless share in the fruit of the land. And, in the same manner as a poor man and a widow were to retain their dignity, the manner of their participation in the fruit of the land would be such that they could maintain their honor and self-respect. They need not beg or seek a handout. They could go into the fields and orchards after the harvest, like the farmers, and they could work for their own small harvest, searching and gleaning for the grain and fruit that had been left there. By allowing some produce to remain, the farmers "were not simply being charitable to those less fortunate than themselves; they were expressing their gratitude to God, who had brought them out of slavery in Egypt and given them a land of their own."¹⁸⁶

¹⁸⁶Craigie, 311.

As noted earlier, laws requiring generosity to the needy could not easily be enforced. If the laws were to be obeyed, it was because the Israelites were convinced that this was their duty, rather than because they feared punishment. Therefore the motivating clause became a very important part of these laws. Two reasons for generosity to the needy are given in the motivating clause of Deut. 24. The first is a reminder of the Israelites' own slavery and God's deliverance (Deut. 24.18, 22). The second is God's blessing upon their work if they are generous (Deut. 24.19). In both instances the Israelites were to imitate God's prior action. As He had been kind to the enslaved Israelites and freed them from bondage, so now the Israelites were to be kind to those in need. "The relationship of Israelites to the vulnerable," writes Van Houten, "is analogous to God's relationship to them when they were in Egypt. Now the Israelites have some power, and can use that power to benefit others."¹⁸⁷ The same principle applies to the fruit of the land. Both the land and its harvests are gifts of God to the Israelites.¹⁸⁸ In the same way that God was generous to them, giving them a bountiful harvest, so now they were to imitate His generosity. God would continue to be generous to them if they obeyed this command. The Israelites were not to see themselves as having rights vis-à-vis the land or others. Their new status as free landholders, ready to harvest a crop, was seen as the result of an act of God's grace. Their continuing status as free landholders was also seen as dependent upon God's grace. Their generosity toward others was part of their response to God's prior acts. Consequently, because of this theology of the land, which underlies the

¹⁸⁷ Van Houten, 97.

¹⁸⁸ For a presentation on the theology of giving in Deuteronomy, see McConville, 11-17.

laws dealing with fringe groups, it is more appropriate to designate them as laws advocating social justice than as laws advocating charity.¹⁸⁹ Hence, since the harvest belongs to the Lord, the widow, orphan and the poor are allowed to glean in the fields. The landowner is allowed to go over the field only once, while the widow, orphan and poor may go over it a second time. In fact, they have as much right to their harvest as the landowner does to his.

I. Deuteronomy 27.19:

Cursed is he who distorts the justice due an alien, orphan (fatherless), and widow. And all the people shall say, 'Amen.'

This verse is part of what is known as the Dodecalog (Deut. 27.15-26), the twelve curses, which itself is part of the ceremony of blessings and cursing which was to take place at the renewal of the covenant to be held in the vicinity of Shechem, after the Israelites had crossed the Jordan river. Six of the tribes were to stand on the slopes of Mount Gerizim and six were to stand on the slopes of Mount Ebal.¹⁹⁰ Although the twelve blessings are not mentioned here, it is possible that they would have been the exact reverse of the twelve curses stated here.¹⁹¹

¹⁸⁹Van Houten, 97.

¹⁹⁰Craigie, 330: "The division of the tribes seems to be based on their maternal relationship to the patriarch Jacob. The tribes descended from Leah and Rachel, Jacob's legitimate wives, represent the blessings; those descended from Zilpah and Bilhah, together with the tribes of Reuben and Zebulun, represented the curses."

¹⁹¹Craigie, 331. For an example of opposites in blessings/curses compare Deut. 28.3-6 and 16-19.

To each of these curses the people were to respond "Amen," a word which refers back to what has immediately preceded, indicating assent and agreement to what has just been proclaimed. Thus, by saying "Amen," the people were showing their understanding and agreement, thereby removing any possible excuse for their conduct, if at some subsequent time they were to disobey the law of the covenant.¹⁹²

While no unifying theme seems to be present among these curses, Craigie has suggested that secrecy¹⁹³ might be considered. He explains that there were certain crimes committed which by their very nature might not be discovered and therefore would not be brought to trial. If secrecy is the theme, then the curses pronounced here make it clear that crime is not determined merely by its discovery and punishment. Whether or not an illegal act was ever discovered, it was nevertheless a crime against God and therefore deserved the curse of God.¹⁹⁴

The fifth curse (v. 19) is directed against all those who, by acting unjustly, might seek to take advantage of those members of society who could be easily abused: the alien, the orphan and the widow. Once again, the status of those offended against was such that they might fear to bring proceedings against the offender. Nevertheless the curse brings the offender under the judgment of God.¹⁹⁵

¹⁹² Craigie, 331.

¹⁹³ See the expression "in secret" used in vv. 15 and 24.

¹⁹⁴ Craigie, 332.

¹⁹⁵ Craigie, 333.

Throughout Deuteronomy we find a deliberate concern for the weak and needy. These members of society, who were the "marginals" of the Israelite community and could not fend for themselves, required both protection and economic redemption. Thus we see that in Deut. 14.28-29 and 26.13 the command was given for the widow and the poor to be allowed to feast on the triennial tithe. In 16.11, 14 the Israelites received the command to let the widow, orphan and stranger partake in the two feasts of harvest. In 24.17-22 some special stipulations concerning this group are made, such as the rights of the widow not to be abused, and the portion of the harvest that must be left on the land for them.¹⁹⁶ And, in 27.19 a person who abused the rights of a stranger, widow or orphan was cursed.

The laws requiring social justice for the needy find many connections with the Book of the Covenant and the Priestly laws. However, the laws in Deuteronomy stand out by the consistent way in which they mention alien, widow and fatherless together, and in the great number of laws which were enacted for their benefit. "Together these laws created a permanent support system for these groups which would prevent them from becoming poor. In this concern, its character as a reform document is surely evident."¹⁹⁷

¹⁹⁶Robert North in Fensham, "Widow, Orphan, and the Poor . . .," 135.

¹⁹⁷Van Houten, 107.

IV. Ruth

The story of Ruth describes the story of a Moabitess who was the widow of Mahlon, one of the two sons of Naomi and her husband Elimelech. When a famine struck, Elimelech left his native village of Bethlehem and with his wife, Naomi, and two sons, Mahlon and Chilion, moved on, settling in the country of Moab. While there, his two sons married local women. Elimelech died, and when both his sons died before siring heirs, Naomi decided to return home to her village. Ruth, one of the two young widows, begged to go with her, while the other, Orpah, went back to her own people.

Upon arriving in Bethlehem, and in accordance with practices like those described in the law,¹⁹⁸ since she was both an alien and a widow,¹⁹⁹ Ruth went about gleaning in the fields. Interestingly, it seems that Ruth needed "favours" in order to do what was apparently her right. Sufficient explanation for this would seem to lie in the rather persistent accusation that the poor were not being cared for as the law had envisioned.²⁰⁰ A series of events, engineered behind the scene by Naomi, brought Ruth and a distant kinsman, Boaz, together. Wanting to marry Ruth but knowing there was a nearer kinsman, Boaz undertook to approach that man, informing him that Naomi was selling a parcel of land but that if he wanted it he had to, according to the levirate obligations, also acquire Ruth. The kinsman refused to buy the land

¹⁹⁸ See Lev. 19.9; 23.22; Deut. 24.19.

¹⁹⁹ Barbara Green. "The Plot of the Biblical Story of Ruth" *Journal for the Study of the Old Testament* 23 (1982): 65.

²⁰⁰ Green, "The Plot of the Biblical Story of Ruth," 65, n. 24.

because he didn't want to diminish his inheritance by producing a son with Ruth. Thereupon Boaz married Ruth and she eventually bore a son who was called the son of Naomi by the women of the village.

A. Reconstructing the Story:

According to Propp, the following figures are always present in all or most tales: 1) a villain; 2) a donor (provider); 3) a helper; 4) a. a sought-for person, or b. its father; 5) a dispatcher; 6) a hero (seeker or victim); and 7) a false hero.²⁰¹ Applying this list to the Book of Ruth, Sasson states the obvious: the three primary figures are Naomi, Ruth and Boaz. Naomi is the dispatcher who sets the heroine, Ruth, on her quest and, ultimately, draws most of the benefits from this quest.²⁰² Boaz fulfills more than one role: that of the donor in chapter 2²⁰³ and that of a "new hero, inasmuch as ... the hero's helper."²⁰⁴ The sought-for person, then, is the ~~בן~~, that is, Ruth's/Naomi's offspring, while the false hero is the nearest kinsman.²⁰⁵ While this makes for some interesting structural analysis, it does not provide a better understanding of the content of the book of Ruth.

Seeking to supplement Sasson's application of Propp's scheme through the use of historical analysis, Athalya Brenner starts with the hypothesis that, once upon a time, there existed two oral tales which shared a common main theme, well-known from patriarchal and other stories: the reversal of feminine fortune, that is, a destitute/barren

²⁰¹Sasson, *Ruth*, 201.

²⁰²Sasson, *Ruth*, 202.

²⁰³Sasson, *Ruth*, 205.

²⁰⁴Sasson, *Ruth*, 211.

²⁰⁵Sasson, *Ruth*, 211.

since recurring themes from the Old Testament can be found in these traditions.²⁰⁷ While differing in the details of plots and sub-themes, the two tales were similar, featuring either Naomi or Ruth as the sole heroine. Brenner then proposes the following reconstruction²⁰⁸:

	A. The Naomi Story	B. The Ruth Story
Heroine	Naomi (Judaite).	Ruth (foreigner; link by marriage).
Marital status	elder widow, bereaved mother, in exile.	young and childless widow, in own homeland.
Economic position	destitute, but still has some land in Bethlehem.	destitute--no land, no apparent source of income, no protection.
Starting point	return (alone from Moab to Bethlehem). ²⁰⁹	spontaneous migration ²¹⁰ from homeland to the unknown--dead husband's land.
Expectations	reversal of fortune (to previous position of wife and mother).	change--re-union with late husband's unknown family.
Additional difficulties	long absence.	lack of recognition and connections.
Plot	Naomi comes back, is recognized; still has title or rights of sorts to family's land and must be redeemed or released from ties. She calls on Boaz, who redeems her and her land after discouraging the other go'el. A son is born; family line and estate are retained and Naomi's fortune is fully reversed.	Ruth appears in the unknown land. Using courage and initiative, she manages to introduce herself to her husband's family and become a retainer. She seduces Boaz, thus securing a husband and later an heir and redeeming her late husband's line and--possibly--land she has not heard about until coming to Bethlehem.

²⁰⁷Brenner, 391. She refers here to the stories of the matriarchs (Sarah, Rebecca, Leah, Rachel) and their handmaidens, as well as Samson's mother and Hannah (Samuel's mother).

²⁰⁸Brenner, 391-392.

²⁰⁹See the same starting point in the Patriarchal "reversal of fortune" scheme (within the framework of the divine promise):

famine --> exile --> apparent loss of hope --> reversal --> return.

²¹⁰A voluntary migration, not even dictated by a divine command (see Abram, Gen. 12). This is a completely new theme, the opposite of the negative "foreign woman" theme that we find in Prov. 1-9 (if, indeed, the phrase "foreign woman" here refers to someone from a foreign land), the Deuteronomic writings and Nehemiah.

Outcome	satisfactory solution	satisfactory and surprising.
Main themes	reversal of fortune (status and land). The older woman is reinstated and becomes a mother.	reversal of fortune. A young, defenseless widow becomes a foremother of a dynasty. A stranger joins Judaite society and religion voluntarily and becomes integrated through her wit, efforts, looks and faith.

From these reconstructed hypothetical tales the following considerations can be made²¹¹:

1. Naomi's story is closer to the patriarchal and other exceptional birth stories (i.e., Samson's mother, Hannah) than Ruth's is.
2. Ruth's story favorably introduces a relatively new theme: the integration of a foreign woman into Judaite society.
3. In both stories the "happy ending" serves to reinforce the existing social order.
4. Some of the items, which appear in both stories, are either similar (childlessness, destitution, later marriage and birth) or else compatible (knowledge about the heroine's right to a piece of family property). Other factors, though, are incompatible: the different ages cited, the ethnic origin, and the names.²¹²
5. The only way to preserve the chief features of both stories is to bind the two women in a simulated mother/daughter relationship which fits both variants--it does not cancel out either Naomi's difficulties or Ruth's troubles.²¹³

²¹¹Taken from Brenner, 392-394.

²¹²Because of these Brenner, 392, writes: "If one wants to preserve the chief feature of both stories, they have to be joined in a way that will retain two heroines; will supply them with a meaningful relationship; and will somehow reconcile (for the sake of credibility) all or most of the conflicting features."

²¹³Brenner, 393, comments:

A true mother/daughter relationship will not do, for then part of the inheritance problem--in the absence of male kin--is solved as a matter of course. This way most of the main themes common to A and B, or unique to one of them, can be included in the combined version and the differences minimized, if not disposed of altogether. Thus Naomi, the older woman, is made foster-mother for Ruth's baby.

6. We ought to remember that the Ruth story is the third installment, so to speak, in a series which begins with Lot's daughters and the birth of Moab and Ammon (Gen. 19.30-38) and continues with the story of Tamar and Judah (Gen. 38). All three stories are linked by common themes: foreign women; Moab; the seduction of a male relative for the purpose of giving birth to a male heir; the continuation of the blood line through sexual relations or marriage with a male relative; the author's positive evaluation of the woman's initiative, at least in the cases of Tamar and Ruth. Furthermore, all three stories belonged to king David's genealogy.²¹⁴
7. The book suffers from some unevenness and inconsistencies because the final combined version contains themes of the original tales which become hindrances rather than an asset. The main ones are:
 - a. The exchange of roles and dominant positions between Naomi and Ruth at various points in the plot.
 - b. A tension underlying the motherhood of either Naomi or Ruth, or both.
 - c. The redemption problem: who is being redeemed--Naomi, Ruth, or both?

Admittedly, much of this reconstruction is only a hypothesis, but it helps put some interesting and important questions into perspective, most notably the economical care of widows, one who has had two sons and another who still did not conceive. It also takes for granted that the Book of Ruth is rooted in antiquity, prior to the time of the monarchy.

²¹⁴Brenner, 393-394, explains:

Indeed, the three stories anticipate David's foreign connection and his weakness for women by overtly claiming that these two things were in the king's blood. Thus elements of the Ruth story which relate to king David's heritage could not have been easily dismissed by the author-compiler. On the other hand, the Naomi story contains patriarchal themes which were probably well known and loved by listeners and authors alike. In short, the author of the combined version (our MT Book of Ruth) could neither drop one variant--or part of it--in favor of the other, nor commit himself by deciding which one was 'truer' or had the greater literary and didactic merit.

B. Dating the Story:

Scholars do not agree upon the date of composition of the Book of Ruth. For example, Hals, basing his conclusion on a comparison of the theological ideas of the book with those found in other writings attributed to that period--the court history of David in 2 Sam. 6-1 Kings 2, the Joseph story in Genesis 37-50 and the story of Rebekah in Genesis 24--has proposed that the composition of Ruth should be located in the context of the "Solomonic Enlightenment."²¹⁵ However, for Driver, "the general Hebrew style ... shows no mark of deterioration, it is palpably different, not merely from that of Esther and Chronicles, but even from Nehemiah's memoirs or Jonah, and stands on a level with the best parts of Samuel."²¹⁶ Thus, most modern scholars would agree with Driver's conclusion that "the general beauty and purity of the style of Ruth point more decidedly to the pre-exilic period than do the isolated expressions quoted to the period after the exile."²¹⁷

It seems clear from this story, however, that the custom of the levirate was known and practiced during the time of the Judges and that

²¹⁵R.M. Hals. *The Theology of the Book of Ruth* (1969), as presented by D.R.G. Beattie. "The Book of Ruth as Evidence for Israelite Legal Practice" *Vetus Testamentum* 24, 3 (July 1974): 252.

²¹⁶S.R. Driver. *An Introduction to the Literature of the Old Testament* (Edinburgh, Scotland, 1891, 1913, 1950), as presented by Beattie, "The Book of Ruth as Evidence for Israelite Legal Practice," 253.

²¹⁷As presented by Beattie, "The Book of Ruth as Evidence for Israelite Legal Practice," 253. For a full discussion on the dating and authorship of Ruth, see R.K. Harrison. *Introduction to the Old Testament* (Grand Rapids, MI: Wm. B. Eerdmans, 1969): 1059-1064. See also Bill T. Arnold and Bryan E. Beyer. *Encountering the Old Testament* (Grand Rapids, MI: Baker Books, 1999): 182; Bill T. Arnold. "Ruth" in *Asbury Bible Commentary*. Eugene E. Carpenter and Wayne McCown, eds. (Grand Rapids, MI: Zondervan Publishing House, 1992): 347-357; Robert L. Hubbard. *The Book of Ruth*. New International Commentary on the Old Testament (Grand Rapids, MI: Wm. B. Eerdmans Pub. C., 1988); David M. Howard. *An Introduction to the Old Testament Historical Books* (Chicago, IL: Moody Press, 1993).

it had been extended from the brother-in-law to the kinsmen of the deceased husband in order of proximity. It also appears clear that its purpose was to continue the name of the deceased in connection with his landed inheritance.²¹⁸ This confirms Wilson's description of Israelite society in the period of the Judges as that of a lineage system which grows by means of birth and marriage.²¹⁹

C. Naomi's Property:

One of the problems, which confront us in the Book of Ruth, arises from the fact of Naomi's possession of the field which had formerly belonged to her husband Elimelech.²²⁰ There is no indication in the Old Testament laws that a widow might inherit the property of her husband. Numbers 27.8-11 describes the normal system of inheritance as being from father to son. If, however, the man had no son, his daughters might be his heirs. If he had neither sons nor daughters, then the inheritance passed to his nearest male relative. Thus, under this system, when Elimelech died his property should have gone to his sons. However, since both his sons had also died their property must have passed to their nearest male relative who, presumably, would be the kinsman who appears in Ruth 4 as the anonymous redeemer.²²¹ The question to ask is this: how did Naomi come to be in possession of Elimelech's property?

²¹⁸ Godfrey Rolles Driver and John C. Miles. *The Assyrian Laws* (Germany: Scientia Verlag Aalen, 1935-1975): 244.

²¹⁹ Robert R. Wilson. *Sociological Approaches to the Old Testament* (Philadelphia, PA: Fortress Press, 1984): 37-47.

²²⁰ Ruth 4.3.

²²¹ Beattie, "The Book of Ruth as Evidence for Israelite Legal Practice," 254.

Addressing this question, the tenth century Karaite commentator Salmon ben Yehoram has suggested three possible answers.²²² His first proposal is that it was customary for the mother to inherit from her sons if they died without heirs. His second alternative is that the field may have been Naomi's dowry and, since the dowry could not be included with other family property, she sold the field to recover her dowry in order to survive. Finally, he suggests that the ownership of the field remained suspended until it should be seen what would become of Ruth, whether a child would be born to her who would inherit the property of Mahlon and Chilion or not, a view which Salmon ben Yehoram preferred.

Abraham ibn Ezra, a twelve century Jewish scholar, held the view that Naomi and Ruth had a joint inheritance of the field. His comment on Ruth 4.5 reads: "the widow had a marriage contract, the mother inherits the rest (of her son's estate)."²²³ Ibn Ezra argued that the marriage contract would have specified what portion of the husband's estate would fall to the wife in the event of his death or of divorce, but it seems possible that he is reading back into the biblical text practices of the post-biblical period.²²⁴

²²²In *Livre d'hommage à la mémoire du Dr. Samuel Poznanski*. I.D. Markon, ed. (Warsaw, Poland: 1927): 78-96, as presented by Beattie, "The Book of Ruth as Evidence for Israelite Legal Practice," 254.

²²³As presented by Beattie, "The Book of Ruth as Evidence for Israelite Legal Practice," 255.

²²⁴Beattie, "The Book of Ruth as Evidence for Israelite Legal Practice," 255. However, see William Raccah. "Against But For: Jesus' View of Remarriage in Light of the Biblical, Extra-Biblical and Rabbinic Literature on Divorce and Remarriage." MA Thesis (Vanguard University/Southern California College, Costa Mesa, CA: Theological Research Exchange Network, 1987): 19-20, 66-75.

More recent scholars have made little advance beyond the speculations of the medieval rabbis. For example, Neufeld has proposed that Naomi did, in fact, inherit property from her deceased husband because "at that date the rigor of the land had, by custom at least, become somewhat mitigated."²²⁵ He further suggests that if Naomi did not actually inherit the property she may have been "merely the executrix or trustee for the regulation of the succession of the legal heirs."²²⁶ Citing Jepsen's theory,²²⁷ that ownership of the property had originated with Naomi's father and had been held by Elimelech, as an *errèbu* son-in-law during his lifetime, reverting to Naomi after his death, Neufeld's proposal is, in effect, the same as Salmon ben Yehoram's. This theory has been challenged by Burrows, who pointed out that the text clearly states that the field had belonged to Elimelech and concluded that "we must admit that the book of Ruth assumes the practice of inheritance by widows ... At any rate our author assumes that his readers will not regard it strange."²²⁸ Burrows also draws attention to the fact that "in 2 Kings 8.1-6 we find a widow in possession of a field, presumably in trust for her son."²²⁹

The fact is that the author of the Book of Ruth represents Naomi as being in possession of property "which was our brother Elimelech's" (4.3). This certainly indicates that it was possible for a widow to

²²⁵E. Neufeld. *Ancient Hebrew Marriage Laws* (London, England: Longmans, Green & Co., 1944): 240.

²²⁶Neufeld, *Ancient Hebrew Marriage Laws*, 240.

²²⁷J.A. Jepsen. "Das Buch Ruth" *Theologische Studien und Kritiken* 108 (1937-1938): 419-421.

²²⁸Millard Burrows. "The Marriage of Ruth" *Harvard Theological Review* 40 (1947): 188.

²²⁹Burrows, "The Marriage of Ruth," 188, n. 45.

inherit her husband's estate.²³⁰ The question to ask, therefore, is not whether widows could inherit, but in what circumstances was this custom observed?

Whatever the case may be, Naomi had a piece of property to sell. Whether it was her dowry or the estate of her late husband, we do not know, but her ownership is rather unusual in light of the fact that Elimelech and his family had either left Bethlehem permanently, in which case they would have disposed of all their properties (movable and immovable), or they would have left with the intention of returning some day, in which case it is very doubtful that the field would have lain fallow for so long a time. Someone must have taken care of that field, either as a new owner or as a trustee. If it was the latter, then all the legal wrangling about how Naomi comes to be the inheritor is valid. If, however, it was the former, that is, if a new owner was in possession of the field, it is quite possible that the only one who could qualify for it would be a close relative, if not, in fact, the *בִּנְיָאֵל*, whose role it was to help his poor relative keep his land.

Although nothing in the text allows us to conclude this with certainty, we would like to propose that if the book of Ruth was written during the period of the Judges, period of the amphictiony, the law of Jubilee would be in effect and, consequently, all properties sold would revert to their original owners,²³¹ in this case Elimelech who, however, had died. This does not explain how Naomi became owner of the field, but

²³⁰ Beattie, "The Book of Ruth as Evidence for Israelite Legal Practice," 256.

²³¹ See Lev. 25.10-17; see especially Lev. 25.25-28.

it serves to explain how Elimelech would be able to dispose of his property one day and some time later, after the famine had abated, be able to reclaim it.

The Book of Ruth seems to present evidence that "widows could and did inherit the estate of their husbands, and that it was probably the case that childless widows would take precedence, in inheritance, over lateral male relatives of their husband."²³² In an environment where the economic well-being of widows was regulated, and where land possession was the ultimate claim of belonging to the Israelite community, Naomi's ownership of her late husband's property can be viewed only as a tangible demonstration that widows were granted certain means which would help them survive.

D. Land Redemption:

The unique interrelationship of the ancient Israelite customs of the $\text{לְקַח$ ²³³ (redeemership) and the $\text{לְקַח$ (levirate) is presented in the Book of Ruth. Both of these customs are essentially connected to the ownership of land, which was considered, in principle, inalienable.²³⁴

²³²Beattie, "The Book of Ruth as Evidence for Israelite Legal Practice," 266.

²³³Robert Gordis. "Love, Marriage, and Business in the Book of Ruth: A Chapter in Hebrew Customary Law." in *A Light unto My Path*. Old Testament Studies in Honor of Jacob M. Myers. Howard N. Bream, Ralph D. Heim and Carey A. Moore, eds. (Philadelphia, PA: Temple University Press, 1974). Gordis, 252, writes:

This redemption of land was of course only one of the functions of the *go'el*. The execution of blood vengeance on behalf of the murdered member of the family or clan (Num. 35.9ff; Deut. 19.1ff) had been progressively restricted by the establishment of the cities of refuge. This process of attrition of the blood-avenging function was undoubtedly accelerated by the establishment of the Hebrew monarchy with its own organs of justice. What remained for the *go'el* was the more pacific duty of preventing the alienation of land from the family. This function survived longer, since it did not compete with the structure of government.

²³⁴Thomas and Dorothy Thompson. "Some Legal Problems in the Book of Ruth" *Vetus Testamentum* 18, 1 (Jan. 1968): 79. See Lev. 25.23.

The law of redemption prescribed that if a man was forced, through impoverishment, to sell a part of his property, "his nearest kinsman is to come and buy back what his relative has sold."²³⁵ The underlying motive of this law is that the ownership of property should, if at all possible, be retained by a particular kin-group.

A man suffering economic distress had four courses of action open to him.²³⁶ He could, in the first instance, seek out a kinsman and ask him to buy his land holdings directly from him thereby preventing its alienation from the family, as well as guaranteeing a better chance of repossessing it later if he was in a position to do so. A second option was to sell the land to an outsider and later appeal to a kinsman to

²³⁵ See Lev. 25.25f.

²³⁶ Gordis, 253, writes:

In this connection it should be noted that the Edict of Ammisaduqa and other Mesopotamian sources concerning the remission of debts, the freeing of slaves, and the reversion of land holdings suggest that the biblical laws may not have been purely utopian (see ANET, Supplement, 526-28); this is the most extensive document extant dealing with the proclamation of an act of "equity" by a Babylonian king, a practice in vogue at the accession of a king to the throne and on succeeding intervals of seven or more years. Ammisaduqa, the tenth ruler of the Hammurabi dynasty, ruled from 1641 to 1626 B.C.E. It may be noted that the Edict of Ammisaduqa is very detailed only with regard to the remission of debts, but is much less explicit on the freeing of those sold into slavery for debt. No reference is made in the Edict to the restoration of land to the original owner. Nor is there an enunciation of any cosmic religious principle, such as set forth in Lev. 25.23.

It is noteworthy that the differences in the degree of attention given in Mesopotamia to the various features of this act of equity have their parallel in biblical and post-biblical experience. The principle of remission of debts (Deut. 15.1ff.) during "the year of release" was operative as late as the Second Temple Period. Its observance created grave economic problems in the more advanced, urbanized society which required access to credit. Hence Hillel's *tagganah* of the *prosbul* (first century C.E.), (Shebiith 10:2,3), which utilized a legal fiction to make it possible to collect unpaid debts after the *s^emittah*. On the other hand, Rabbinic tradition declares that the biblical provision for the restoration of land in the Jubilee Year was not enforced after the early exile of the Trans-Jordanian tribes of Reuben, Gad and half of Manasseh (Sifra, Behar 11, 3) or thereafter, during the Second Temple (bArakhin 32b).

"redeem" it by repurchase.²³⁷ A third alternative was to sell the land to an outsider and later "redeem" the land from its alien owner himself.²³⁸ Finally, if none of these methods was available to him, the impoverished seller could wait until the Jubilee Year and his land would revert to him without payment.²³⁹

Of the options open to the destitute man only three are, properly speaking, instances of redemption, that is to say, the restoration to its original owner of land sold to an outsider. The first does not involve either the removal of the land from the possession of an alien purchaser or its restoration to its original owner. It cannot be, therefore, an instance of redemption.²⁴⁰

What is not clear, however, is whether, "in redeeming the property from sale, the redeemer *ipso facto* purchased the property for himself."²⁴¹ The logical development from the law of redemption is that if a man were to wish to actually dispose of part of his property, the first option to purchase it would have to be offered to the kinsman who was entitled to act as his redeemer.

²³⁷ Lev. 25.25 reads: "If a fellow countryman of yours becomes so poor he has to sell part of his property, then his nearest kinsman is to come and buy back what his relative has sold."

²³⁸ Lev. 25.26-27 reads: "Or in case a man has no kinsman, but so recovers his means as to find sufficient for its redemption, then he shall calculate the years since its sale and refund the balance to the man to whom he sold it, and so return to his property."

²³⁹ Lev. 25.28 reads: "But if he has not found sufficient means to get it back for himself, then what he has sold shall remain in the hands of its purchaser until the year of jubilee; but at the jubilee it shall revert, that he may return to his property."

²⁴⁰ Gordis, 253.

²⁴¹ Beattie, "The Book of Ruth as Evidence for Israelite Legal Practice," 257.

However, the law of redemption does not deal with such precise concepts as title of ownership. It seems that the sole purpose of the law was to maintain property within the possession of the family. It was of no concern to this law which member of the family was actually deemed to be its owner. Therefore, in Beattie's words, "no light is shed on the question from that source."²⁴² Furthermore, redemption was not equivalent to purchase, since the original owner was entitled, in certain circumstances, to have his property returned to him or his heirs by the kinsman who had redeemed it.²⁴³ This may be inferred from the context of the redemption of Elimelech's field, wherein the act of redemption did not confer on the redeemer an absolute title to the property redeemed. This is evident from the fact that, having stated his intention to redeem the field, the redeemer subsequently changed his mind when he heard Boaz's second speech. Beattie thus argues that,

If the process of redemption gave the redeemer absolute rights over the property nothing that Boaz might have said could have influenced the redeemer to the point of changing his mind; the fact that he did change his mind as a result of hearing what Boaz said shows that, had he redeemed the field, he would not have acquired total rights to its disposal.²⁴⁴

The basic meaning of the biblical root לָקַח is "the restoration of an object to its primal condition."²⁴⁵ Thus in the law of redemption associated with the Year of Jubilee (Lev. 25.28), the לְקַח represented

²⁴²Beattie, "The Book of Ruth as Evidence for Israelite Legal Practice," 257.

²⁴³Beattie, "The Book of Ruth as Evidence for Israelite Legal Practice," 266-267.

²⁴⁴Beattie, "The Book of Ruth as Evidence for Israelite Legal Practice," 258.

²⁴⁵For further details on this, see David Daube. *Studies in Biblical Law* (New York, NY: KTAV Publishing House Inc., 1969): 39-62.

the process of restoration to the *status quo ante*. Gordis suggests that "since the kinsman was charged with this obligation, the participle *go'el* develops the secondary meaning of 'relative' pure and simple (Ruth 2.20; 3.9, 12) and is a synonym for *moda'* (2.1), and the verb gets the meaning 'act the kinsman's role' (3.13)."²⁴⁶

The procedure outlined in Lev. 25.25 finds its application in Jer. 32.8-15. It seems clear from the text of Jeremiah that what has taken place is not an example of land redemption. Rather it describes the purchase of a piece of property by a kinsman from a distressed relative in order to keep it from being sold to an outsider. There we read:

Then Hanamel my uncle's son came to me in the court of the guard according to the word of the Lord, and said to me, "Buy my field, please, that is at Anathoth, which is in the land of Benjamin; for you have the right of possession and the redemption is yours; buy it for yourself." Then I knew that this was the word of the Lord.

As the ensuing narrative makes abundantly clear Jeremiah did not "redeem" the land from an outsider, but purchased it directly from Hanamel, paid him for it, and prepared the papers attesting to the sale. Furthermore, he did not return the field to Hanamel, which would have been the case had Jeremiah purchased it from an "outside" buyer. Throughout the proceedings the term used is *קנה*, "to buy, purchase": *קנה-לך* ("buy it for yourself" v. 8), *הספר המקנה* ("the deed of purchase", vv. 11, 12, 14). This incident is a *bona fide* example of the

²⁴⁶Gordis, 253.

first procedure open to a farmer threatened with loss of his land to an outsider.²⁴⁷

The situation in Ruth, however, is completely different. When Naomi and Ruth return from Moab they are completely destitute. In order to survive, Ruth goes out into the fields to glean with the poor. Nowhere do we find any indication that "Naomi possesses any land, fertile or otherwise, available for sale from the past or that she has acquired any before or since her return."²⁴⁸ For Rowley, this view overlooks the clear statement that the land had belonged to Elimelech (4.3) and his sons (4.9).²⁴⁹ He further proposed that Elimelech had willed Naomi a life contract in the property.²⁵⁰ Neufeld, for his part, has proposed that Naomi was merely the executrix or the trustee for the successors to the legal heirs.²⁵¹ Others have advanced the idea that Naomi had property from her own family which Elimelech had administered during his lifetime.²⁵² Looking at all these speculations, Gordis argues that "if Naomi was a landowner, or even an administrator of land, no matter what the circumstances, she would be guilty of greed and deception in sending her foreign-born daughter-in-law to glean in the field among the poor."²⁵³ Yet Burrows, wanting to see only goodness in Naomi, has suggested that the property was too small to support Naomi and Ruth, or

²⁴⁷Gordis, 254.

²⁴⁸Gordis, 254.

²⁴⁹H.H. Rowley. "The Marriage of Ruth" in *The Servant of the Lord and Other Essays on the O.T.* (London, England: 1952): 163, as presented by Gordis, 254.

²⁵⁰Rowley, "The Marriage of Ruth," 163, as presented by Gordis, 254.

²⁵¹Neufeld, *Ancient Hebrew Marriage Laws*, 240-241.

²⁵²Jepsen, "Das Buch Ruth," 419-421.

²⁵³Gordis, 255.

that Naomi was unaware that she had property.²⁵⁴ However, as Gordis points out, neither suggestion finds the slightest support either in the letter or the spirit of the book--Naomi and Ruth are totally destitute.²⁵⁵

The verse which is significant for a proper understanding of the situation, but which has lent itself to a variety of interpretations, is Ruth 4.3. It reads:

Then he [Boaz] said to the closest relative [redeemer], "Naomi, who has come back from the land of Moab, has to sell the piece of land which belonged to our brother Elimelech."

This verse, in the Septuagint, is rendered:

And Boaz said to the kinsman: "The portion of the field which was your brother Elimelech's which was given to Naomi [ε δεδοται νοεμων] returning from the land of Moab."

It seems that the LXX version sought to achieve two purposes. First, it offers the "explanation" that Naomi received the land as a gift. Second, it eliminates the difficulty of her "having sold" (מְכַרָּה) any land. However, as Gordis points out, the LXX cannot possibly represent the original Hebrew for, "aside from its complete graphic divergence from MT [Masoretic Text], the sentence in LXX is grammatically defective since it has no principal clause. It cannot

²⁵⁴Millard Burrows. "The Marriage of Boaz and Ruth." *Journal of Biblical Literature* 59 (1940): 448.

²⁵⁵Gordis, 255.

therefore be described as a successful solution of the substantive difficulty."²⁵⁶ The LXX rendering should, therefore, better be described as a midrash.²⁵⁷

The Peshitta, for its part, translates the verse:

The portion of the field of our brother Elimelech, Naomi sold me.

This rendering certainly preserves the perfect of the verb *מָכַרָהּ*, but gratuitously adds an all-important pronoun and omits the remainder of the verse. Thus Gordis can write: "even this radical procedure does not solve the difficulties either of the text or of the incident being narrated. For obviously at this point in the proceedings Boaz has bought nothing."²⁵⁸

²⁵⁶ Gordis, 255.

²⁵⁷ Michael E. Williams. "What Are Midrashim, and What Are They Doing Here?" in *The Storyteller's Companion to the Bible*. vol. 1 (Nashville, TN: Abingdon Press, 1991):13, 19-21. Williams writes:

One of the time honored ways of interpreting the Bible is to tell stories about its stories. Certain events in the Old Testament are told more than once, with each telling being different. Some of these retellings are ways of interpreting an old story for a new time. Even those who wrote the texts of the biblical narratives interpreted and commented on those stories by telling other stories. . . . Each story is called a *midrash* (plural, *midrashim*) . . .

So, midrashim resulted when the ancient rabbis went in search of (inquired into) the meaning of the Scriptures for their lives. Midrash is also the name for the process of inquiring into the Scriptures for their meaning. . . .

Often midrashim do take the form of stories or pieces of stories . . . These stories seek to answer questions about and to fill the gaps in the biblical stories. . . .

I see three basic functions for the midrashim . . . The first might be called "filling the gap." The stories and story fragments answer questions about the biblical stories that the Scripture leaves unanswered. . . .

The second function of midrash is to draw an analogy. . . .

The third is to describe an encounter. . . .

²⁵⁸ Gordis, 255.

Moreover, since, as we have seen, the term ~~לְקַח~~ (4.6) means "the restoration of an object to its primal condition,"²⁵⁹ it cannot properly be applied to the purchase of land *from Naomi* by her kinsman. And, more importantly, there are no indications that she receives any money in the transaction or that she was even present during the proceedings.²⁶⁰

What seems to be taking place here is that Naomi is disposing of the obligation-right to redeem the land which had originally belonged to her husband and her sons. In view of the death of her two sons, she is the only living heir of Elimelech. As such, she has the right to redeem the alienated property of her husband by repurchasing it from its buyers. But, lacking the resources to do so, she called upon her kinsman, through Ruth, so that he may redeem the land by purchasing it from its present owner. The problem with this view is that our extant biblical law codes give no indication that a woman possessed such legal rights as land redemption. Yet, for Gordis, "the point need not be labored that in ancient times, as in our own, codified law, particularly in such areas as the rights of women, lagged behind life and custom."²⁶¹

According to Ex. 21.7-11, a woman was virtually rightless, being under the authority of her husband. Her father or her husband could abrogate any vow she took.²⁶² Since only sons shared in the estate of their father, she had no right of inheritance.²⁶³ A betrothed girl caught in adultery faced mandatory execution with no provision for

²⁵⁹Daube, *Studies in Biblical Law*, 39.

²⁶⁰Gordis, 255.

²⁶¹Gordis, 256.

²⁶²Num. 30.6, 9.

²⁶³Deut. 21.15-17.

forgiveness or reconciliation with her future husband.²⁶⁴ The same applied to a married woman.²⁶⁵ On the other hand, the records of biblical life that have come down to us show that, notwithstanding these legal liabilities, women were by no means mere chattels in the hands of the males. They were vital personalities in their own right. In Gordis' words, "If nothing else, the ability to make family life a heaven or a hell, to which the Proverbist refers time and again (Prov. 21.9, 19; 25.24; 27.15), placed substantial power in women's hands."²⁶⁶ The virtuous woman in Proverbs 31, who undoubtedly belonged to the upper level of society, engaged in buying and selling, and did not content herself with her household duties.²⁶⁷ Job, whose story most probably antedates the earliest biblical records, after his restoration gave his daughters an inheritance "among their brothers."²⁶⁸ Later on, at Elephantine, we find the redoubtable thrice-married property owner Mibtahiah, daughter of Mahseiah, conducting elaborate business activities.²⁶⁹

It seems reasonable to assume, therefore, that on the basis of the data adduced above, "in the late biblical period at least, when there were no male survivors a woman would inherit from her husband and succeed to his rights and privileges."²⁷⁰ Neither Naomi nor Ruth inherited land from their husbands and in the case of Naomi, from her

²⁶⁴ Deut. 22.20-21.

²⁶⁵ Lev. 20.10.

²⁶⁶ Gordis, 257; bYeb. 115a puts it this way: "A woman carries her weapons in her own person."

²⁶⁷ Prov. 31.14.

²⁶⁸ Job 42.15.

²⁶⁹ Bezalel Porten. *Archives from Elephantine* (Los Angeles, CA: University of California Press, 1968): 235-263.

²⁷⁰ Gordis, 258.

sons. All she inherited was the right to redeem the family property that her husband had sold prior to moving to the land of Moab. It is because she was unable to exercise this right, in view of her poverty, that she transferred (קָנְתָהּ) this obligation-right to her nearest kinsman. However, when he declined, Boaz, a somewhat more distant relative, accepted (קָנָה) this obligation-right, which also brought him Ruth as a wife,²⁷¹ thus fulfilling the levirate obligation.

We know from the extra-biblical parallels that the levirate was not limited to brothers.²⁷² While brothers are mentioned first as the normal partners of the levirate union, as Deuteronomy does, the obligation could rest just as well on the father. In the book of Ruth, in default of a brother-in-law or father-in-law, the duty of marrying the widow fell to other relatives in order of their nearness of kinship to her.

It would also appear that the purpose of levirate marriage did not rest on the notion that the family was so complete a unity that what one member did another could do with exactly the same significance. The emphasis was not so much on the fact that it was the husband's brother who took his brother's widow, although he was the obvious person to do it. Porter rightly points out that "even the regulations of Deut. 25.5f. betray awareness that the brother may not always wish to do this and, though his action is shameful, no actual penalty falls on him and he is only insulted publicly by the widow."²⁷³ So what we find in the Book of

²⁷¹Gordis, 258.

²⁷²See MAL §33 and HL §193.

²⁷³Joshua R. Porter, "The Legal Aspects of the Concept of 'Corporate Personality' in the Old Testament" *Vetus Testamentum* 15, 3 (July 1965): 376.

Ruth, assuming that it is dealing with the levirate marriage, is that, on occasion, the next of kin might quite amicably transfer his obligation. Thus the words of Boaz to whom the right is transferred are highly significant:

Then Boaz said to the elders and all the people, "You are witnesses today that I have bought from the hand of Naomi all that belonged to Elimelech and all that belonged to Chilion and to Mahlon.

Moreover, I have acquired Ruth the Moabitess, the widow of Mahlon to be my wife in order to raise up the name of the deceased on his inheritance, so that the name of the deceased may not be cut off from his brothers or from the court of his birth-place; you are witnesses today."

It is evident that there is no question here of the family acting as a unity to preserve itself, for Naomi's relations do not appear to have felt obligation in this direction. Rather, what is at stake is the disposal of an individual's property, including of course, his widow.²⁷⁴

It is also manifest that the two verbs *מָכַר* (to sell) and *קָנָה* (to buy or acquire) must carry a special nuance beyond their basic meaning, "sell" and "buy." In Ruth it would seem that both are making reference to the transfer of the obligation-right of redemption.²⁷⁵ It is this

²⁷⁴Porter, 376.

²⁷⁵Gordis, 258, writes:

This special usage of the verb *makhar* and *qanah* cannot now, as far as I know, be attested elsewhere in our extant sources. The fact is perhaps explicable by the fact that we have very few descriptions of commercial transactions in biblical times. However, partial analogies for this usage may be found. The verb *makhar* is used in a non-commercial context to "hand over to enemies" (Deut 32.30; Jg. 2.14; 3.8; 4.2, 9, 10; 7; 1 Sam. 12.9; Is. 50.1; Ezek. 30.12; Ps. 44.13), a sense which embodies the nuance of "transfer," which we postulate for Ruth 4.3. In Mishnaic Hebrew, the *Qal* of *qanah* means "acquire," and the *Hiphil*, *hignah* means "to cause to acquire, empower to acquire." Thus, 'sh hqnw lw mn hsmym (bKethubot 82a)

power which is transmitted from the nearest kinsman to Boaz through the use of a movable object, namely his sandal, for Ruth 4.7 reads:

Now this was the custom in former times in Israel concerning the redemption and the exchange of land to confirm any matter: a man removed his sandal and gave it to another; and this was the manner of attestation in Israel.

It is clear from Ruth 4.7-9 that the handing over of one's sandal was a symbolic ratification of a land transaction.²⁷⁶ In very early times one attested one's right to a parcel of land by ceremonially treading its boundaries.²⁷⁷ Later the actual treading was replaced by the sandal symbolism.²⁷⁸

E. Go'el and Levirate:

According to Beattie, "a consensus has emerged that the marriage [of Ruth and Boaz] should be seen as a levirate marriage of a type anterior to that described in Deut. 25.5-10 in that the obligation extends to a more distant kinsman than a brother-in-law. Some have labeled this institution 'redeemer marriage'."²⁷⁹ This view is predicated on the conventional interpretation of 3.9 that shows Ruth

"Heaven gave him the power to acquire a wife," 'yn 'dm mqnh dbr sl' b' l'wlm (bBaba Metzia) "A man cannot empower the sale of something not yet in existence." lyhwh h'rs wmlyh'h 'l sm sqnh whqnh wslyt b'yilmw (bRosh Hashanah 31a) "The earth is the Lord's and its fullness--because He acquired it and empowered its inhabitants to take possession and He rules in His world." The word *makhar* in Ruth is equivalent to the Mishnaic *hiqnah* "cause, empower to buy." For this meaning, we may also note the Aramaic root *zbn*, which in the Pe'al means "buy" and in the Pa'el has a causative sense, "cause to buy, hence, sell."

²⁷⁶ Ian Cairns. *Word and Presence - A Commentary on the Book of Deuteronomy* (Grand Rapids, MI: Wm. B. Eerdmans Pub. Co., 1992): 217.

²⁷⁷ See Gen. 13.17; Deut. 1.36; 11.24; Josh. 1.3.

²⁷⁸ See Ps. 60.9, where God lays claim to Edom by throwing his shoe over it.

²⁷⁹ D.R.G. Beattie. "Redemption in Ruth, and Related Matters: A Response to Jack Sasson" *Journal for the Study of the Old Testament* 5 (1978): 65.

requesting Boaz to marry her,²⁸⁰ basing her petition on the fact that he was a kinsman. However, it does not follow from this that he was under any obligation to grant her request. Nor does it follow that there existed an institution of redeemer marriage by which any Israelite man was liable to marry the widow of a kinsman.²⁸¹ Ruth's request (3.10) shows that she acted as a free agent when it came to remarriage. This, in fact, provides us with powerful evidence with which to deny the occurrence of the levirate institution in Ruth. "Were it otherwise, Ruth should have entered "Mr. So-an-So's" household as she arrived in Bethlehem."²⁸²

In order to understand the obligations which befell the "redeemer" in the Book of Ruth, we need to look at various elements of the story as it unfolds. Starting with Ruth 1.11-13, we are confronted by a very interesting statement from Naomi:

But Naomi said, "Return, my daughters. Why should you go with me? Have I yet sons in my womb, that they may be your husbands? Return, my daughters! Go, for I am too old to have a husband. If I said I have hope, if I should even have a husband tonight and bear sons, would you therefore wait until they were grown? Would you

²⁸⁰ Leon Morris. *Ruth*. Tyndale Old Testament Commentaries (Downers Grove, IL: InterVarsity Press, 1968): 293, writes:

In explaining Boaz' fear lest Ruth be discovered (one cannot explain the author's need to explain a discretion not limited to Boaz, Bethlehem or the Bible), the author provides a reference which "calls attention to the provision in the Mishnah (Yeb. 2:8) whereby a man suspected of having sexual relations with a gentile woman was excluded from performing the levirate with her."

²⁸¹ Beattie, "Redemption in Ruth, and Related Matters: A Response to Jack Sasson," 66.

²⁸² Jack M. Sasson. "The Issue of Ge'ullah in Ruth" *Journal for the Study of the Old Testament* 5 (1978): 56. Sasson adds: "In this respect it is to be remembered that, technically speaking, no re-marriage ceremony is necessary within this institution; rather, a widow is automatically considered as wife to the levir. Only 'divorce' ends this relationship." See also, Beattie, "Redemption in Ruth, and Related Matters: A Response to Jack Sasson," 68.

therefore refrain from marrying? No, my daughters; for it is harder for me than for you, for the hand of the Lord has gone forth against me."

While Naomi's statement could simply be rhetorical, expressing the utter hopelessness of the situation, it may also imply the existence of yet another strange form of the levirate whereby the levirate could have been extended further than has commonly been thought.²⁸³ This could be possible, argues Thomson, "since the levirate is much more closely tied to the problem of inheritance than it is to real blood descent."²⁸⁴ Thus, according to this theory, a son of Naomi by another husband would inherit the property from Naomi. This property would then return to the direct or family line of inheritance if the marriage between this hypothetical son and Ruth or Orpah resulted in a child.²⁸⁵

However, the crux of the discussion regarding the role of the ~~לֵוִי~~ (redeemer), rightly or wrongly, centers on the marriage of Ruth to Boaz. The traditional rabbinical view held that ~~אָבִי~~ in Deut. 25 refers to the actual brother of the widow's deceased husband. Yet, Jewish medieval exegetes were divided in their understanding of the marriage of Boaz and Ruth.²⁸⁶

²⁸³ See H. David, "The Date of the Book of Ruth," *Old Testament Studies* 1 (1942), 56.

²⁸⁴ Thompson, "Some Legal Problems in the Book of Ruth," 96.

²⁸⁵ Thompson, "Some Legal Problems in the Book of Ruth," 97.

²⁸⁶ Etan Levine. "On Intra-Familial Institutions of the Bible" *Biblica* 57 (1976): 557. See also D.R.G. Beattie. *Studies in Jewish Exegesis of the Book of Ruth from the Ancient Versions to the Mediaeval Commentaries*. unpublished Ph.D. dissertation, St. Andrews University (Scotland, 1972): 268-269.

Rashi believed that Boaz's marriage to Ruth was an arbitrary condition connected to the redemption of the field.²⁸⁷ He was of the opinion that Ruth, having an interest in the field, imposed on the redeemer, through Boaz, the condition that, if he wished to redeem the field he would also have to marry her. Rashi's comment on Ruth 4.5 reads: "she will not be willing unless you marry her." This view, which runs contrary to most of the other medieval rabbis, was necessitated by his pronouncement that the marriages of Mahlon and Chilion to Ruth and Orpah were not valid Jewish marriages inasmuch as Ruth and Orpah were unconverted heathens at the time of their marriages.²⁸⁸ This would imply, therefore, that the marriage of Ruth to Boaz was not a levirate marriage, since her first marriage was not "proper" and that she became "Israelite/Jewish" only when she decided to follow Naomi to Bethlehem. However, if this were the case, what would be the connection between the redemption of the field and the obligation to take Ruth as wife? Boaz's last speech clearly demonstrates that there was a connection between the two. It would also be good to point out that whatever Boaz presented in his last speech may have been planned, and may even have been discussed through Ruth, by Naomi, for it is she who is always behind the scenes, having planned the whole encounter and set her eyes on Boaz and nobody else.

Believing that the word "brother" in Deut. 25.5 referred not to a "blood brother" but to a more distant relative, Salmon ben Yehoram, a tenth century Karaite whose position was in direct contradiction to Jewish

²⁸⁷ Levine, "On Intra-Familial Institutions of the Bible," 557.

²⁸⁸ Beattie, "The Book of Ruth as Evidence for Israelite Legal Practice," 258.

tradition and who is best known for his belligerent and violent polemics against Rabbinic Judaism, held that the marriage of Boaz and Ruth was a straight case of levirate marriage.²⁸⁹ Because the Karaites understood the word **יָבֵם** in Deut. 25.5ff. to refer to a male relative other than the actual brother-in-law, the marriage of a man to his brother's widow was prohibited by the law against incest (Lev. 18.16). Thus, the fact that neither Boaz nor the redeemer was a brother of Mahlon presented no difficulty for Salmon ben Yehoram. He went on to compare the phrase "the name of the dead shall not be cut off" with similar phrases in Deut. 25.7, 9, in the context of the levirate law, and deduced that in practice levirate marriage (**יָבֵם**) and redemption (**גְּאֻלָּה**) are the same thing, the former being distinguished from the latter in that the **יָבֵם** would be a relative who could marry his **יְבֵמָה** without engaging in incest. On the other hand, a **גְּאֻלָּה** could be any male relative, including those with whom marriage was prohibited by the law against incest. Thus, to use Salmon's dictum, "every *yabam* is a *go'el* but not every *go'el* is a *yabam*."²⁹⁰ And, although the word **גְּאֻלָּה** rather than **יָבֵם** is found in Ruth, Salmon ben Yehoram argued that the terminology of **גְּאֻלָּה** is used "because the field is also bound up with the marriage of Ruth, for the word *yibum* may not be applied to fields, but the word *ge'ullah* applies both to fields and to women."²⁹¹

David Qimḥi, another medieval Jewish scholar, proposed that Ruth's second marriage was not a levirate marriage in terms of the deuteronomic

²⁸⁹ Levine, "On Intra-Familial Institutions of the Bible," 557.

²⁹⁰ Beattie, "The Book of Ruth as Evidence for Israelite Legal Practice," 258-259.

²⁹¹ Beattie, "The Book of Ruth as Evidence for Israelite Legal Practice," 259.

law but that it represented a similar custom. He stated in his commentary:

In the Torah there is no obligation (on the redeemer) except to redeem the inheritance of his relative; to marry his wife and to raise up seed for him was not obligatory. But they had a custom that when any man died childless who had no brother to enter into levirate marriage with his wife, his relative, to whom marriage with his wife was not prohibited by incest, would go and marry her and raise up seed for him in the manner of a yabam. They used to perform and maintain this practice as the commandment of levirate marriage which is in the Torah.²⁹²

More recent scholars have put forward views which are not so dissimilar to that of David Qimḥi. Brewer disagreed that Ruth's marriage was an example of the levirate, denying little more than the appellation.²⁹³ He proposed that levirate marriage originated in the sphere of **אֵלֶּיךָ**, and outlined its development in four stages:

- 1) the **אֵלֶּיךָ**, as next of kin, was heir to his kinsman and must marry the widow--it is this type of inheritance-marriage that he saw in Ruth;
- 2) only brothers were required to perform the duties of levirate;
- 3) only such brothers as have lived together with the deceased were required to act as levir;

²⁹²As found in Jean Mercier (Io. Mercerus) *Libellus Ruth cum scoliis masorae* ...etc., Paris, 1563), and as presented by Beattie, "The Book of Ruth as Evidence for Israelite Legal Practice," 259.

²⁹³Brewer, "Die Leviratsehe im Buche Ruth," *TSK* 76 (1903): 330, as presented by Beattie, "The Book of Ruth as Evidence for Israelite Legal Practice," 260.

4) no brother was permitted to take his brother's wife.²⁹⁴

Burrows traced the origin of the levirate marriage to the principle of redemption. He suggested that,

from the point of view of the primitive clan the failure of any of its men to leave a son would be loss comparable to the murder of one of its member. Just as the nearest kinsman of a murdered man was required by clan-law to take revenge on the clan of the murderer, it would not be unnatural if the clan in like manner regarded the death of the member without leaving a son as a loss for which the nearest kinsman should make reparation.²⁹⁵

Thus, for him, the marriage of Ruth represents "a transitional stage between redemption-marriage as an affair of the whole clan and levirate marriage as an affair of the immediate family."²⁹⁶

Neufeld thought that the marriage of Boaz and Ruth must be identified with the principle of levirate marriage, but that the main difference between it and the standard form of levirate marriage was only one of the different relationships between the parties concerned.²⁹⁷ Rowley agreed with this view and wrote that "all probability is against those who differentiate Ruth's marriage from levirate marriage in kind, and not merely in the degree of relationship between Ruth and Boaz."²⁹⁸

²⁹⁴J. Brewer. "The Ge'ullah in the Book of Ruth" *American Journal of Semitic Literature* 19 (1902-3): 144.

²⁹⁵Millard Burrows. "Levirate Marriage in Israel" *Journal of Biblical Literature* 59 (1940): 32.

²⁹⁶Burrows, "The Marriage of Boaz and Ruth," 54.

²⁹⁷Neufeld, *Ancient Hebrew Marriage Laws*, 38.

²⁹⁸H.H. Rowley. "The Marriage of Ruth" *Harvard Theological Review* 40 (1947): 79.

Arguing against Epstein's concept of *ge'ullah* marriage,²⁹⁹ which didn't see an association between redeeming Elimelech's field and marrying Ruth, McKane asserts that the redeemer of Elimelech's field was *ipso facto* under an obligation to marry Ruth.³⁰⁰ He seems to have put his finger on the nub of the problem when he observes that,

the behavior of the *go'el* is intelligible only if the second demand, which caused him to change his mind, was something which he did not anticipate when he agreed to exercise his right of *ge'ullah*. His behavior is therefore not explicable on the hypothesis that the right of redemption and the duty of the levirate belong together in a postulated institution of *ge'ullah* marriage.³⁰¹

For him, "*ge'ullah* marriage is a type of levirate marriage which applies where brothers do not live together and their estates are separate."³⁰² He argues that if this were so, the **נָאֵל** would have known from the beginning that he could not exercise his right over Elimelech's land without becoming Ruth's **קַבֵּץ**, and therefore the change of mind on the part of the **נָאֵל** is inexplicable.³⁰³ The reasonable conclusion is that whatever the motive for the redeemer's sudden change of mind, it cannot have been the result of the discovery on his part that he would have to marry Ruth as a condition of exercising his right of redemption. Furthermore, as Beattie points out, "it follows that no such condition

²⁹⁹ L.M. Epstein. *Marriage Laws of the Bible and the Talmud* (Cambridge, MA: Harvard University Press, 1942).

³⁰⁰ W. McKane. "Ruth and Boaz" *TGUOS* 19 (1961-2): 38.

³⁰¹ McKane, 38.

³⁰² McKane, 33.

³⁰³ McKane, 38.

can have been imposed upon him, for if no connection existed in law between redemption and marriage (be it levirate or otherwise) then Boaz cannot just have invented one."³⁰⁴ Also worth noting is that when the redeemer revoked his first statement that he would purchase Elimelech's field, he made no reference to marriage but merely stated that he could not afford to redeem the field.

Brewer, for his part, assumes that the redeemer may have already been married and that he may have had children. If this was the case, his refusal to redeem the field--"lest I destroy my inheritance" (Ruth 4.6)--does make sense because his estate would have to be divided among the children he would have by Ruth if he married her, as well as among those he already had.³⁰⁵ Rowley, adding to this theory, proposes that Boaz was probably childless.³⁰⁶ The primary, and evident, objection to this explanation is that it depends on assumptions for which the biblical text gives no warrant. As Beattie points out,

the author of the story must have expected his audience to be able to understand the situation from the information which he provided. It would seem unlikely that an author who took the pain to explain to his audience why the redeemer used a shoe to symbolize his abdication of interest should leave the same audience wondering why the redeemer had lost his interest in redeeming the field.³⁰⁷

³⁰⁴Beattie, "The Book of Ruth as Evidence for Israelite Legal Practice," 262.

³⁰⁵J. Brewer. "The Ge'ullah in the Book of Ruth" *American Journal of Semitic Literature* 19 (1902-1903): 148.

³⁰⁶Rowley, "The Marriage of Ruth," 92. See also Thompson, "Some Legal Problems in the Book of Ruth," 98-99.

³⁰⁷Beattie, "The Book of Ruth as Evidence for Israelite Legal Practice," 261.

Thus, Beattie writes: "it is the belief of the present writer [Beattie] that no deeper meaning than 'I cannot afford it' should be sought in the phrase 'lest I destroy my inheritance'."³⁰⁸

Basing his argument on Ruth 4.3-4 and 4.15, Sasson approached the subject from a different perspective and submitted that **תִּזְכֹּר** is tied to Naomi's situation rather than that of Ruth. In the first of these passages, we find Boaz presenting the essentials of the case before the nearest kinsman and the assembled witnesses. There, Boaz speaks only of Naomi, her parcel of land and the duty of redemption. Presented with these facts, and only these facts, the kinsman was ready to intercede on behalf of Naomi by purchasing Elimelech's field. This was all that was necessary for him to fulfill his obligation. However, we can assume quite reasonably that the whole town knew about Naomi's return which had occurred a few months prior, and about the Moabite girl who had come to Bethlehem to share the future of the older woman. It would be illogical, therefore, to think that the nearest kinsman alone was ignorant of these events. We may also ask why, under the circumstances, neither Naomi nor the kinsman had moved earlier to establish a **תִּזְכֹּר** relationship between themselves? In light of this, Sasson writes that,

it would, therefore, have been most singular if the marriage and ge'ullah were issues that were inalterably linked by custom and law. We must, again, conclude that these two institutions were deemed by everyone concerned as wholly unconnected. It is only when Boaz makes an utterly unexpected legal declaration before the

³⁰⁸ Beattie, "The Book of Ruth as Evidence for Israelite Legal Practice," 262.

magistrates and witnesses at the city gate that "Mr. So-and-So" decides to give up his right of purchasing Elimelech's land.³⁰⁹

The second passage used by Sasson, Ruth 4.15, makes the function of the **נָאֵל** very explicit. When Ruth bears a son, destined to perpetuate the memory of the deceased Mahlon over his posterity, the child is to be referred to as the **נָאֵל** of Naomi. His role as such will be to comfort Naomi and to sustain her in her old age. It is evident that these duties will first be undertaken by Boaz until such a time as that son, Obed, would be able to do so himself.³¹⁰ It is interesting to note that Boaz's legal activities at the city gate followed his own sense of priorities as outlined in 4.10; that is, he purchased Elimelech's land and acted as Naomi's **נָאֵל** (4.9) before he became Ruth's husband (4.10).³¹¹ Ruth is the one who marries Boaz and gives birth to a son and heir, yet Naomi is the one being redeemed. "Her daughter-in-law is described as the agent of redemption, but not as the chief beneficiary (4.14-15)."³¹² From this point onward, Ruth is never mentioned and Naomi is depicted as the child's nurse and adoptive mother (4.16).³¹³ Furthermore, as Brenner points out, "the original, suitable name for the baby--as has been suggested by several scholars--should have been 'Ben Noam' or a similar form derived from *n'm*, after Naomi, rather than the present MT Obed."³¹⁴ It may also be noted that the child was not called the son of Mahlon,

³⁰⁹ Sasson, "The Issue of Ge'ullah in Ruth," 54.

³¹⁰ Sasson, 54.

³¹¹ Sasson, 58.

³¹² Brenner, 385.

³¹³ The use of the word translated "nurse," **אִמָּת**, is not clear; for more information see F. Brown, S.R. Drivers and C.A. Briggs. *Hebrew and English Lexicon of the Old Testament* (London, England: Clarendon Press, 1968); see also P. Joüon. *Ruth: commentaire philologique et exegetique* (Rome, Italy: Pontifical Biblical Institute, 1953).

³¹⁴ Brenner, 386.

Ruth's first husband, although Boaz said that he had acquired Ruth to raise up the name of the dead upon his inheritance. Driver further points out that "the fact that the women called the child Naomi's son must not be pressed, since the book is not a legal document."³¹⁵

We can agree with Sasson, then, that the redemption of a kinsman's property, which had been sold because of unfavorable economic reasons, was designed to protect the poorer land owning classes. "In effect," writes Sasson, "the institution of the *ge'ullah* promoted permanent land-holding, secured economic stability, discouraged mass movement of landless populations, and prevented the passing of land in the hands of few."³¹⁶ We could also say with Beattie: "There is, to my mind, an important connection between redemption and marriage in Ruth, but this connection is one which is created as part of a scheme of the story. It is a literary connection, not one which had any independent existence in a legal institution."³¹⁷ We would want to add, though, that with regard to the obligation of Boaz to marry Ruth, no commentator read so far has made allusion or reference to the sexual involvement of the pair³¹⁸ being the reason why Boaz is trying so hard to marry Ruth.

F. Comparison Between Ruth and Deuteronomy:³¹⁹

Due to some similarities between the story of Ruth and the legislation of Deuteronomy 25.5-10, "many scholars and probably most

³¹⁵ Driver and Miles. *The Assyrian Laws*, 245, n. 1.

³¹⁶ Sasson, 60.

³¹⁷ Beattie, "Redemption in Ruth, and Related Matters: A Response to Jack Sasson," 66-67.

³¹⁸ Ruth 3.1-10.

³¹⁹ The section which follows is based on Gordis, 246-248.

readers have linked the event of Ruth, chapter 4, to the levirate, regarding it as a rather unorthodox instance of the rite."³²⁰ However, when the details of Ruth 4 are compared with Deuteronomy and other pertinent data, it quickly becomes evident that any similarity between the two is only superficial, if at all.

The first difference between the two passages is that, in Deuteronomy, the rite is obligatory upon "brothers dwelling together." In Ruth, however, both Boaz and the nearest kinsman are such distant relatives that the possibility of a levirate marriage either for Naomi herself or for either Ruth or Orpah "did not occur to Naomi, even in the extremity in which she finds herself upon her return from Moab."³²¹

Second, in Deuteronomy the emphasis is upon perpetuating the name of the dead man in Israel by the birth of a son to his widow. No reference is made to the transfer of property. In Ruth, on the other hand, it seems that the transaction basically revolves around the redemption of property. The concomitant marriage and the support of Ruth and her future offspring are only secondary considerations. However we may present Boaz's interaction with the nearer kinsman, it cannot simply be dismissed as a crafty strategy on his part. Foremost in Boaz's official avowal of his acceptance of the obligation of redemption is the property transaction, while the marriage to Ruth is only secondary.³²²

³²⁰ Gordis, 246.

³²¹ Gordis, 246.

³²² Gordis, 246.

A third difference found between the two accounts is that in Deuteronomy a clear stigma is attached to the brother who does not fulfill his duty as a levir. While the elders may try to persuade the recalcitrant brother-in-law (v. 8), the latter is not obliged to accept the duty. Thereupon, the widow "pulls his sandal off his foot and spits in his face" (v. 9), bringing disgrace upon himself and his family which is henceforth called "the household of the cast-off-sandal" (v. 10). In Ruth the situation is completely different. There we find a straightforward business transaction without the shadow of any discredit falling upon the kinsman when he declines to participate.³²³

Fourth, the actions described in Deuteronomy 25.9, וְקָלְעָה בְּעָלוֹ ([his brother's wife] shall ... pull off his sandal) and Ruth 4.7, וְשָׁלַף אִישׁ בְּעָלוֹ וְנָתַן לְרֵעֵהוּ (a man removed his sandal and gave it to another), while seeming to describe an identical act, are very different. In the first place, a particular verb is used in each case, קָלַץ (to pull off) and שָׁלַף (to draw off, to remove), reminding us that "technical terms are not used indiscriminately."³²⁴ Also, in Deuteronomy it is the widow who pulls off the shoe of her recusant brother-in-law, accompanying her action with spitting in his face, while in Ruth it is the unwilling kinsman who draws off his own shoe and transfers it to his fellow relative, the one who is to undertake the obligation. The widow's removal of her brother-in-law's shoe in Deuteronomy is a symbolic representation of the cutting of the link binding her to him. In Ruth,

³²³ Gordis, 247.

³²⁴ Gordis, 247.

the act of removing one's own shoe was a customary procedure, commercial in character, as is clearly indicated by 4.7:

Now this was the custom in former times in Israel concerning the redemption and the exchange of land to confirm any matter: a man removed his sandal and gave it to another; and this was the manner of attestation in Israel.

Evidence from such varied cultures as those of India,³²⁵ Egypt³²⁶ and the Nuzi texts³²⁷ attests to a wide practice of this custom. Moreover, Ps. 60.8b and 108.9b³²⁸ confirm that the interpretation given in Ruth is valid because "the shoe symbolizes power and authority and its use in a transaction marks the transfer of some right and obligation from one party to another."³²⁹ Furthermore, in Deuteronomy the woman plays a central role in the rite, being the one who appears before the elders, confronts her brother-in-law, removes the shoe and spits in his face. In Ruth, on the other hand, there is no evidence that either, or both, Naomi or Ruth were present at all during the proceedings. In fact,

³²⁵R.T.H. Griffith, *The Ramayan of Valmiki* (1915): 265f, as presented by Gordis, 247.

³²⁶J. Scheftelowitz, *Archiv für Religionswissenschaft* 18 (1915): 255, as presented by Gordis, 247.

³²⁷E.R. Lacheman in *Journal of Biblical Literature* 56 (1937): 53ff. and E. Speiser in *Bulletin of the American Society of Oriental Research* 77 (1940): 15ff., as presented by Gordis, 247.

³²⁸Both say the same thing, using the same words: "Over Edom I shall throw My shoe"

³²⁹Gordis, 247. He writes, 262, n. 35:

It may be added that the reason for the use of the shoe to confirm a transfer of property was probably a practical one. In ancient society, men possessed few movable objects that could be used to symbolize a transaction. The only article of major clothing was the garment worn by day and used as a covering by night (Ex. 22.25-27; Deut. 24.11), which could obviously not be removed in public. Hence, the sandal was used. In Rabbinic Judaism acquisition was validated by taking hold of a scarf (*qinyAn 'agabh SUDAr*). This practice is still in vogue, in the validation of the kethubbah "marriage contract" at weddings and at *m^ekhIrat xAmec*, the fictive "sale of leaven" before Passover, the possession of which is forbidden to householders by Rabbinic law.

"the reference to them in the third person suggests that they are absent."³³⁰

A fifth difference between Deuteronomy and Ruth is the fact of Ruth's free agency, demonstrating once again that what is presented to us is not an instance of the levirate. That Ruth is a free agent is seen from Boaz's statement in 3.10:

Then he [Boaz] said, "May you be blessed of the Lord, my daughter. You have shown your last kindness to be better than the first by not going after young men, whether poor or rich.

Finally, the differences between the levirate in Deuteronomy and the transaction described in Ruth become even more impressive when we seek to relate the latter to the origin and purpose of the levirate in the history of Israel.

G. Inferences from the Book of Ruth:

While it is true that as a result of the transaction in the closing chapter of the book Ruth is married to Boaz, the negotiations themselves revolved around Elimelech's property. The acquisition of this property by a kinsman also entailed the support of the destitute feminine members of the family, the widows Naomi and Ruth.³³¹ The redemptive aspect (תקנת) which transpires in this story is fulfilled by the birth of a son to Ruth, Obed, who will be the גאון to Naomi. He is, in fact, considered to be Naomi's son, not Ruth's, for we read in 4.14-17:

³³⁰ Gordis, 247.

³³¹ Gordis, 252.

Then the women said to Naomi, "Blessed is the Lord who has not left you without a redeemer today, and may his name become famous in Israel.

"May he also be to you a restorer of life and a sustainer of your old age; for your daughter-in-law, who loves you and is better to you than seven sons, has given birth to him."

Then Naomi took the child and laid him in her lap, and became a nurse.

And the neighbor women gave him a name, saying, "A son has been born to Naomi!" So they named him Obed. He is the father of Jesse, the father of David.

Naomi remained the one without support for Ruth, by marrying Boaz, would be looked after. Therefore, we would suggest that the marriage of Ruth to Boaz would be better termed as "surrogate-levirate" since although Ruth marries Boaz, the first child is claimed as Naomi's.

What we find in the Book of Ruth is a genuine example of land redemption. Sold under the stress of economic poverty to an outsider, Elimelech's property is redeemed and restored to the family by a distant kinsman who benefits by marrying Ruth. So although the story of Ruth and Naomi is not a true application of the levirate as described in Deut. 25.5-10, "it has been suggested that at least a part of the *raison d'être* of levirate marriage, in historical times, was the desire to retain within the family of the husband the property which his widow, being childless, had inherited from him,"³³² which seems to be the case in Ruth. Furthermore, this beautiful, yet intricate, story demonstrates the extent to which women, and widows at that, who are destitute would

³³²Beattie, "The Book of Ruth as Evidence for Israelite Legal Practice," 267.

go to ensure their survival. Using all that the laws and customs of the day permitted them to, as well as stretching some of the boundaries of what may have been acceptable, they went about securing their economic continued existence, albeit helped by a plot of land which had belonged to the husband of the oldest of the two. Yes, land transaction and redemption of land are present. Yes, marrying Ruth is part of the equation. But, most importantly, means for sustenance are at the center of the story.

V. Prescriptions from the Psalms and Wisdom Literature

A. Psalm 82:

Although further afield, yet very pertinent to our study, is Psalm 82. Here we find certain trends which give us some clues to a better understanding of the position of the widow, orphan and the poor in ancient Israel.

*God takes His stand in His own congregation (the congregation of God);
He judges in the midst of the rulers (gods).
How long will you judge unjustly,
And show partiality to the wicked? [Selah]
Vindicate the weak and fatherless;
Do justice to the afflicted and destitute.
Rescue the weak and needy;
Deliver them out of the hand of the wicked.
They do not know nor do they understand;
They walk about in darkness;
And the foundations of the earth are shaken.
I said, "You are gods,
And all of you are sons of the Most High.*

"Nevertheless you will die like men,
And fall like any one of the princes."
Arise, O God, judge the earth!
For it is You Who does possess all the nations.

The date³³³ and interpretation³³⁴ of this psalm offer severe difficulties and are variously interpreted by scholars. However, our present purpose is not to argue possible dates and interpretations of this psalm. Whatever else may be said about it, it appears to be strongly influenced by Canaanite mythology. Yet to a certain extent it is purged to fit in with Israelite conceptions of God and to show the absolute domination of Yahweh over the heathen gods.³³⁵ Fensham even advances the theory that this psalm "was also used shortly after it was purged as a kind of missionary poem to convince the Canaanites that Yahweh is a God of Justice and no other is beside Him."³³⁶

Verses 3 and 4 are those pertinent to our study. There, God challenges the gods to give justice (stem **צדק**) to orphans, the weak and the needy, and to save them from the power of the evildoers. However, the gods fail to accomplish this command and the verdict of death is pronounced over them (v. 7). Then the last verse of the psalm challenges God to take a stand and to give justice to the world. From

³³³ Scholars place it in the period between the seventh and fourth centuries B.C.E. although there is no certain means to date it. Fensham, "Widow, Orphan, and the Poor . . .," 134.

³³⁴ Fensham, "Widow, Orphan, and the Poor . . ." 135: "We refer to the "Thronbesteigung" theory of Mowinckel, where the Psalm is interpreted in light of the battle myth in which Yahweh annually overcomes the rival gods of foreign nations."

³³⁵ R.T. O'Callaghan, "A Note on the Canaanite Background of Psalm 82" *Catholic Biblical Quarterly* 15 (1953): 311-314.

³³⁶ Fensham, "Widow, Orphan, and the Poor . . .," 135.

this we may deduce that the only One Who can give justice and deliverance to the weak is the God of Israel. He is the only true judge and protector of the weak. This is the main difference between the Israelite conception of God and that of Mesopotamia and Egypt: the exercising of justice is narrowed down to one God and all the others are excluded.³³⁷ Yahweh is the One Who gives justice to this group and everybody, even the heathen gods, has to do likewise. Yet the policy is to be balanced, again something which is unique to the Old Testament. On the one hand the command is given to execute justice to the weak (Deut. 24.17-22; 26.19), but at the same time the warning is given not to favor the poor in spite of their guilt (Ex. 23.3; Lev. 19.15).³³⁸

What we have in Psalm 82 is a cry for justice. Although the widows are not specifically mentioned as one of the categories for which Yahweh will stand, their constant association with the needy throughout the Old Testament would automatically include them. Thus, the only one who can vindicate the cause of the weak, among whom we find the strangers, orphans, widows and Levites, is God himself. Abused as they are by those who could help them, their only recourse, and rescuer, is Yahweh, the judge of all the earth.

When we turn our attention to the Old Testament wisdom literature we cannot but notice that the care of the weak is definitely regarded as the policy of God. He is the One Who will protect the weak and maintain the widow's property (Prov. 15.25).³³⁹ Anybody who abuses the rights of

³³⁷Fensham, "Widow, Orphan, and the Poor . . .," 135.

³³⁸Fensham, "Widow, Orphan, and the Poor . . .," 135.

³³⁹Prov. 15.25 = "The Lord will tear down the house of the proud,

widow, orphan and the poor acts contrary to the will of God (Prov. 14.31).³⁴⁰ Those who show compassion to the weak (Prov. 19.17)³⁴¹ or give bread to the poor (Prov. 22.9)³⁴² will receive blessings from the Lord. The poor are not to be abused because they are poor (Prov. 22.22-23)³⁴³ and leaving alone the property of those who belong to this group is commanded quite strongly (Prov. 23.10-11).³⁴⁴

The protection of the weak was regarded as the will of God, the virtue of kings (Prov. 29.14)³⁴⁵ and the duty of the common people. The legal literature of the Old Testament embodied the execution of this policy and severe punishment was pronounced on those who transgressed this principle. But, for Job (24.1-4), the oppression of widows, orphans and the poor is carried out by evildoers who, according to a pessimistic attitude, are prosperous in spite of their sins.³⁴⁶

But he will establish the boundary of the widow."

- ³⁴⁰ Prov. 14.31 = *"He who oppresses the poor reproaches his Maker,
But he who is gracious to the needy honors Him."*
- ³⁴¹ Prov. 19.17 = *"He who is gracious to a poor man lends to the Lord,
And he will repay him for his good deed (benefits)."*
- ³⁴² Prov. 22.9 = *"He who is generous (has a good eye) will be blessed,
For he gives some of his food to the poor."*
- ³⁴³ Prov. 22.22-23 = *"Do not rob the poor because he is poor,
Or crush the afflicted at the gate;
For the Lord will plead their case,
And take the life of those who rob them."*
- ³⁴⁴ Prov. 23.10-11 = *"Do not remove the ancient boundary,
Or go into the fields of the fatherless;
For their redeemer is strong;
He will plead their case against you."*
- ³⁴⁵ Prov. 29.14 = *"If a king judges the poor with truth,
His throne will be established forever."*
- ³⁴⁶ Job 24.1-4 = *"Why are times (times of judgment) not stored up by the Almighty,
And why do those who know him not see his days?
Some remove the landmarks;
They seize and devour flocks.
They drive away the donkeys of the orphans;
They take the widow's ox for a pledge.
They push the needy aside from the road;
The poor of the land are made to hide themselves altogether."*

According to the Old Testament wisdom literature, protection of the weak is regarded as the correct way of life. And, while there are remarkable similarities and analogies between the conception of protection of the weak in Mesopotamian, Egyptian, and Israelite literature, some differences occur. Fensham, in his dated yet thorough study,³⁴⁷ pointed to four main points of comparison.

The first one addresses the protection of the weak as the responsibility of the god. In polytheistic religions this characteristic was ascribed to a special god in the pantheon. In Mesopotamia it was Shamash, the sun god, who was regarded as the protector of the poor and held as judge of heaven and earth, of gods and men, although in some instances Ningirsu and Ninurta were mentioned instead.³⁴⁸ In Egypt the protection of the weak was also ascribed to the sun god, Re or Amon-Re, who was likewise held as judge. However, in some circles, Ptah was the one regarded as the god of justice. The defender of the weak par excellence, according to the Old Testament, was Yahweh, Who, with direct commands and prohibitions takes them under his protection. Now, while the protection of the weak in the Old Testament was definitely not unique in comparison with the neighboring cultures, the main difference was that Yahweh is regarded as the *only* protector. In fact, He was placed in direct opposition to the gods of foreign nations and hailed as the only true Supreme Judge of the world (Ps. 82).³⁴⁹

³⁴⁷Fensham, "Widow, Orphan, and the Poor . . .," 129-139.

³⁴⁸Fensham, "Widow, Orphan, and the Poor . . .," 137.

³⁴⁹Fensham, "Widow, Orphan, and the Poor . . .," 138.

The second point dealing with the protection of the weak in Mesopotamian, Egyptian and Israelite literature addresses the role of the king. In ancient cultures the king was considered as the direct representative of the god on earth. In Mesopotamia the king, while still a human being, was regarded as a *substitute* for the god. In Egypt, on the other hand, he was regarded as a *divine being*, the son of the sun god. The situation in ancient Israel was very different. The king was regarded as the *representative* of Yahweh with granted powers to rule the nation.³⁵⁰ In all three contexts there was a close link between the god and the king, but if protection of the weak was the will of the god, it was the duty of the king to execute it in practical life.³⁵¹ Sadly, as Israel evolved as a nation, the principle of protection of the weak was abandoned by kings, thus giving rise to the ethical and moral preaching of the prophets on this point. Simply put, the kings had failed in one very old, deep-rooted principle: to protect, as representative of God, the widow, orphan and the poor.³⁵²

A third element looked at by Fensham, is the conception that protection of the weak was expanded as a common way of life for ordinary people. In all the cultures of the ancient Near East, the people had to respect the rights of the poor or else receive punishment, if not through legal means, then through direct punishment by the god. This, however, was not sufficient in deterring some from abusing the needy, especially in decadent societies such as existed during the First

³⁵⁰ See William Raccah. "From Tribal League to Kingdom" in *They Spoke From God*. William C. Williams, ed. (Springfield, MO: Logion Press, to be published in 2002).

³⁵¹ See, for example, 2 Sam. 14 where David listened to the complaints of the women of Tekoah.

³⁵² Fensham, "Widow, Orphan, and the Poor . . .," 138.

Intermediate Period of Egypt and in Israelite society during the times of the prophets. Thus, "the vertical command and prohibition by the god is to be executed in horizontal relations."³⁵³

Finally, the attitude taken toward the widow, orphan and the poor is to be looked at from a legal background. These people had no rights, or in some cases possibly restricted rights, and no legal personalities. They were considered almost as outlaws, or more precisely, "beyond laws." Anyone could thus oppress them without danger that legal connections might endanger his position. Their protection, therefore, was necessary in order to restore the balance of society. This protection was somewhat assured through the direct command of the god and the virtue of kings.³⁵⁴

Very early in the history of the ancient Near East the compulsion was felt to protect those who were weak. It was a common policy, whether original in each instance or borrowed from a neighbor. We do know, though, that the Israelites in later history inherited the concept from their forebears, some of whom had come from Mesopotamia, some who had been captive in Egypt, and others who had grown up in the Canaanite world.

³⁵³Fensham, "Widow, Orphan, and the Poor . . .," 138.

³⁵⁴Fensham, "Widow, Orphan, and the Poor . . .," 139.

VI. Prophetic Voices

According to many nineteenth-century biblical critics, the prophets were "great innovators and the real founders of the spiritual religion of Israel," namely, "ethical monotheism."³⁵⁵ However, a major shift in assessing the prophets took place in the mid-twentieth century when scholars "focused their attention upon the persons of the prophets" in an effort to "describe the inner religious development of the prophets."³⁵⁶ Throughout the 1950s, '60s, and '70s the focus shifted to the prophetic writings themselves through an emphasis on form criticism.³⁵⁷ In the later decades of the twentieth century the focus shifted once more, this time to a reinvigorated scientific study of the Hebrew Bible, with a renewed effort at applying anthropological models to the study of biblical texts.³⁵⁸

One of the leading speakers for the convergence of sociology, the scientific reading of the Bible, and a social justice message was Walter Rauschenbush.³⁵⁹ Often merely popularizing scholarly ideas, he nonetheless demonstrated with particular aptness how a concern for

³⁵⁵ J.A. Dearman. "Hebrew Prophecy and Social Criticism: Some Observations for Perspective." *Perspectives in Religious Studies* 9 (1982): 131-143.

³⁵⁶ J.M. Ward. "The Eclipse of the Prophet in Contemporary Prophetic Studies. *Union Seminary Quarterly Review* 42 (1988): 97; see also Dearman, 133, and J. Lindblom. *Prophecy in Ancient Israel* (Philadelphia, PA: Fortress Press, 1962).

³⁵⁷ Ward, 99; Dearman, 133.

³⁵⁸ See, for example, Marie Douglas. *Purity and Danger* (New York, NY: Praeger Publishers, 1966); Marie Douglas. *Implicit Meanings: Essays in Anthropology* (London, England: Routledge & Kegan Paul, 1975); Rogerson, J.W. *Anthropology and the Old Testament* (Atlanta, GA: Knox Press, 1978); T.W. Overholt. *Channels of Prophecy: The Social Dynamics of Prophetic Activity* (Minneapolis, MN: Fortress Press, 1989); H. Eilberg-Schwartz. *The Savage in Judaism* (Bloomington, IN: Indiana University Press, 1990); H. Eilberg-Schwartz. "The Problem of the Body for the People of the Book" in *People of the Book: Jews and Judaism from an Embodied Perspective*. H. Eilberg-Schwartz, ed. (Albany, NY: State University of New York Press, 1992): 17-46.

³⁵⁹ See K. Cauthen. *The Impact of American Religious Liberalism* (New York, NY: Harper & Row, 1962): 87-88.

social justice issues could illuminate one's interpretation of the Bible. Thus, he maintained that the prophetic materials provide the essential ground of a biblical view of justice. He further believed that the prophetic perspective ran counter to the religious views and ideals that dominated Israelite society.³⁶⁰ In Rauschenbush's view, the prophets used a religion steeped in ethical concerns to challenge popular faith in ritual forms.³⁶¹

It is not surprising, then, according to Rauschenbush, to see the prophets as taking sides in matters of state, since they were concerned with matters of ethics rather than ritual (a view rightly challenged by many scholars today). Because they were more concerned with public affairs than private morality,³⁶² the prophets spoke out in the name of Yahweh against the "twin-evil" of "injustice and oppression."³⁶³ Their condemnation was directed against a broad range of public misdeeds: "the land-hunger of the landed aristocracy," "capitalistic ruthlessness," and the venality of the judges."³⁶⁴ More importantly, the prophets took up a particular role in the public sector of their society as "champion of the poor." Thus, according to Rauschenbush, "when the prophets conceived Jehovah as the special vindicator of these voiceless classes, it was another way of saying that it is the chief duty in religious morality to stand for the right of the helpless."³⁶⁵

³⁶⁰W. Rauschenbusch. *Christianity and the Social Crisis* (New York, NY: McMillan, 1910): 3.

³⁶¹Rauschenbusch, 7, wrote: "The prophets were the heralds of the fundamental truth that religion and ethics are inseparable, and that ethical conduct is the supreme and sufficient religious act."

³⁶²Rauschenbusch, 9.

³⁶³Rauschenbusch, 8.

³⁶⁴Rauschenbusch, 11-12.

³⁶⁵Rauschenbusch, 11-12.

Prophets in Ancient Israel came from many different backgrounds, yet shared many characteristics. Arnold and Beyer outline the following six elements which characterized the Old Testament prophets. First, each possessed a heart devoted to God. Second, they possessed a strong sense of calling. Third, they were messengers entrusted with the delivery of urgent messages that God had revealed to them. Fourth, the prophets were forthtellers, pointing out the evils of their day and calling the people to repent; they warned them that while the covenant brought many privileges, it also brought many responsibilities, including justice, righteousness, and holiness. Fifth, they were foretellers, declaring the future to their generations. Sixth, they used a variety of literary and oral techniques to communicate their messages.³⁶⁶

It is in their function as forthtellers that we must turn in order to better understand the prevalent situation in Ancient Israel. "To their contemporary they were the moral and ethical preachers of spiritual religion, calling the nation to obedience in conformity to the Mosaic legislation. They fearlessly rebuked vice, idolatry, infidelity, oppression, unfaithfulness, iniquity, and social, moral and political corruption wherever it was to be found."³⁶⁷ Thus, during the prophetic periods of both Israel and Judah, these preachers who clearly denounced the abuse inflicted on the aliens, the widows and the orphans took a strong stance. Whether in Isaiah,³⁶⁸ Jeremiah,³⁶⁹ Ezekiel,³⁷⁰ Zechariah,³⁷¹

³⁶⁶ Arnold and Beyer, 342-343.

³⁶⁷ Hobart E. Freeman. *An Introduction to the Old Testament Prophets* (Chicago, IL: Moody Press, 1968): 49.

³⁶⁸ Isaiah 1.17 = *Learn to do good;
Seek justice,
Reprove the ruthless;*

or Malachi,³⁷² the recurring theme is that God judgment will befall the people of Israel or Judah because they were oppressing the needy.

A. AMOS:

The book of the prophet Amos presents the first such collection of sayings by a prophet.³⁷³ For the most part the book is written in the first person, with only one written in the third person. Amos 7.10-17, tells us about the circumstances of the prophet's public activity. There, around 760 BCE, Amaziah, the chief priest, reports from Bethel to his royal master, Jeroboam II:

Amos has conspired against you in the midst of the house of Israel; the land is unable to endure all his words.

For thus Amos says, 'Jeroboam will die by the sword and Israel will certainly go from its land into exile'" (7.10-11).

*Defend the orphan,
Plead for the widow.*

³⁶⁹Jeremiah 7.5-7 = *For if you truly amend your ways and your deeds, if you truly practice justice between a man and his neighbor, if you do not oppress the alien, the orphan, or the widow, and do not shed innocent blood in this place, nor walk after other gods to your own ruin, then I will let you dwell in this place, in the land that I gave to your fathers forever and ever.*

Jeremiah 22.3 = *Thus says the Lord, "Do justice and righteousness, and deliver the one who has been robbed from the power of his oppressor. Also do not mistreat or do violence to the stranger, the orphan, or the widow; and do not shed innocent blood in this place."*

³⁷⁰Ezekiel 22.7 = *Behold, the rulers of Israel, each according to his power (arm), have been in you for the purpose of shedding blood.*

They have treated father and mother lightly within you. The alien they have oppressed in your midst; the fatherless and the widow they have wronged in you.

³⁷¹Zechariah 7.9-10 = *Thus has the Lord of host said, "Dispense true justice, and practice kindness and compassion each to his brother; and do not oppress the widow or the orphan (fatherless), the stranger (resident alien) or the poor; and do not devise evil in your hearts against another."*

³⁷²Malachi 3.5 = *"Then I will draw near to you for judgment; and I will be a swift witness against the sorcerers and against the adulterers and against those who swear falsely, and against those who oppress the wages earned in his wages, the widow and the orphan (fatherless), and those who turn aside the alien (sojourner), and do not fear Me," says the Lord of Host.*

³⁷³Koch, Klaus. *The Prophets*. vol. 1 (Philadelphia, PA: Fortress Press, 1983): 36.

What Amos proclaims at the very heart of the nation, that is, at the central sanctuary, was considered as provocative and subversive. Thus, from this time on, Amos was forbidden to prophesy in Bethel. This is interesting, for Bethel was the place where possession of the land was promised to Jacob,³⁷⁴ and where its occupation after the deliverance from Egypt was ritually celebrated.³⁷⁵ What would, therefore, provoke such a penalty?

It is evident that Amos, in his prophecies, developed what the visions only suggest: the guilt of Israel's leaders was the reason for Israel's downfall. His very first saying, 2.6-8, is the most detailed:

Thus says Yahweh:

"For three transgressions of Israel and for four

I will not revoke its punishment,

Because they sell the righteous for money

And the needy for a pair of sandals,

"These who trample the head of the helpless on the dust

Also turn aside the way of the humble;

And a man and his father go to the same girl

in order to profane my holy name.

"And on garments taken as pledges they stretch out beside every altar,

And in the house of their God they drink the wine of those who have been fined.

While the sale of men and women is condemned, this is not what disturbs the prophet. According to ancient oriental and Israelite law, the sale of men and women was permitted if debts could not otherwise be paid. In Israel, slavery for debt was restricted to six years,³⁷⁶

³⁷⁴ Gen. 18.10ff.

³⁷⁵ 1 Kgs. 12.28f.

³⁷⁶ Ex. 21.1.

although it is questionable whether a person who had once been enslaved was able to rebuild his or her livelihood again afterwards. The fact is that, in Ancient Israel, only the person who possessed his own land, inherited from his fathers, could enjoy legal status, undertake military service or play an active part in the cult; and it was only a person like this who counted as a member of the 'am, the civil and religious community.³⁷⁷ What we see in Amos is not an opposition to the existing law. Rather, he is enraged at the irresponsible and devastating spread of the sale of human beings. Like other exploitative practices, such as the unreasonable seizure of clothing as security, or of wine from a debtor, it was the sign of a fatal tendency in contemporary society. Under the pretext of justice, the behavior of a particular class of people is condemned.³⁷⁸

Within this context, one can easily imagine that a widow would not find much support, let alone justice. The heedless, luxurious life led by the exploitative ruling class did not allow for much concern towards those who were facing economical difficulties and reversals. And, while Amos does not specifically address the situation of widows, what he depicts in relation to the treatment of the poor and needy can most certainly be extended to widows as well, since they, too, were associated with the poor and needy.

³⁷⁷ Koch, *The Prophets*, vol. 1, 44-45.

³⁷⁸ Koch, *The Prophets*, vol. 1, 45.

B. Hosea:

Shortly after Amos, indeed perhaps with some overlap, a second prophet appeared in the Northern Kingdom. He too committed his discourses to writing. He too pointed to the same unconditional catastrophe as Amos. This prophet, Hosea ben Beerī, foresaw the downfall of state and people, the advance of Assyrian power, military defeat and deportation. Yet, his language was different, as he combined direct speech with metaphorical actions, which oftentimes left bystanders quite astonished. Both, Amos and Hosea, diverge from one another in their criticism of the present. With Amos, social injustice is in the foreground; he cannot accept the alienation between Israelite and Israelite. For Hosea, on the other hand, we come across notes of lamentation about justice which has been perverted into a poisonous weed (10.4).³⁷⁹

However, Hosea's focus is social criticism of the cult. Going much further than Amos, Hosea is not satisfied to merely expose the religion of the present generation as ineffective. He exposes the facts that behind the service of Yahweh lies that of Baal.³⁸⁰ Therefore, what we see in Hosea, although tied in with the social conditions of his days, is very much an attack on the degenerate application of a religion, which affected all of society. Like Amos, Hosea does not specifically address the situation of widows, yet, through his demonstrative preaching includes the care of the poor, or lack thereof, as a direct extension of the corrupted worship of Yahweh.

³⁷⁹Koch, *The Prophets*, vol. 1, 77.

³⁸⁰Koch, *The Prophets*, vol. 1, 77.

C. Micah:

A younger contemporary of Amos and Hosea, from the village of Moresheth in the province of Judah, is the prophet Micah. Nothing is known of his life and, while critical prophecy had begun some years earlier in Judah with Isaiah, Micah is much closer, in style and content, to the North Israelite prophets.³⁸¹

Micah restricted himself to social criticism and, like Amos, Hosea and Isaiah, his prophetic vision extended to greater Israel.³⁸² In fact, the inculcation of certain definite moral virtues is his aim, for he declares:

*He has told you, O man, what is good;
And what does the Lord require of you
But to do justice, to love kindness,
And to walk humbly with your God.*

His fellow citizens disturb Micah because they do not act justly toward their fellowman, nor are they practicing loving-kindness (*hesed*), nor are they in fellowship with God. Thus, Micah is convinced that Yahweh is bound to surrender his own people to their downfall. He shows God as embittered because numerous Israelites are being driven out of their home and land, are losing their *nahala* – their inherited homeland

³⁸¹Hobart E. Freeman. *An Introduction to the Old Testament Prophets* (Chicago, IL: Moody Press, 1968): 216.

³⁸²Koch, *The Prophets*, vol. 1, 94.

- which assures people of a peaceful free life and self-determination.³⁸³

Abuses seem to be the order of the day. Peaceful citizens and war veterans have their cloaks removed,³⁸⁴ false weights are used,³⁸⁵ and prophets, priests and ministers have become venal.³⁸⁶ In fact, the people have become so depraved that they do not even shrink from shedding blood if it is to their own advantage.³⁸⁷ Furthermore, even within the family, bonds that ought to be the strongest are growing slack,³⁸⁸ leading Micah to assert that what is happening in the country seems like crypto-cannibalism.³⁸⁹ The ruling class is no longer upholding justice,³⁹⁰ contrary to God's expectations: "the preservation of institutional ordinances which are vitally necessary to the community."³⁹¹

Once again, the accusations of the prophet point to the mistreatment of the needy. While Micah does not address widows specifically, his description of the harm done to them and their children convey quite forcefully the idea that these women were not in a

³⁸³ Micah 2.1-5, 8-10, especially v. 9, which reads:
*The women of my people you evict,
Each one from her pleasant house.
From her children you take my splendor forever.*

³⁸⁴ Micah 2.8.

³⁸⁵ Micah 6.9f.; see Amos 8.4-6.

³⁸⁶ Micah 7.3.

³⁸⁷ Micah 3.10; 7.2.

³⁸⁸ Micah 7.5f.

³⁸⁹ Micah 3.1-3; see Koch, 95.

³⁹⁰ Micah 3.9; see Amos 6.12.

³⁹¹ Koch, *The Prophets*, vol. 1, 95.

position to defend themselves, nor did they have someone who could take up their cause. And, as seen previously, widows were such persons.

D. Isaiah:

Both Amos and Hosea proclaimed their message in the days of king Uzziah (Azariah). Their contemporary, Isaiah, started his ministry during the same period. However, according to the superscription of the book (1.1), Isaiah also ministered during the reigns of Jotham, Ahaz and Hezekiah, all kings of Judah. This would place the scope of his ministry from about 739 to 700 BCE, although the mention of the death of Hezekiah in 686 BCE, along with Hebrew tradition, which preserves the story that the prophet was sawn in two by the wicked king Manasseh,³⁹² may see Isaiah's activities extend to 681 BCE.³⁹³

Son of a man named Amoz, who is otherwise unknown, and married to a prophetess,³⁹⁴ Isaiah proclaimed the word of Yahweh in Jerusalem. There, he condemned Judah's judicial system in a style reminiscent to that of Amos' critique. Once again we see that the system of law and legal transaction was reinforced with laws that served to benefit the more influential members of society. Furthermore, the rulers did not take up the cause of the disenfranchised,³⁹⁵ the widow and the orphan.³⁹⁶ As Tamez observes, the widows and the orphans were numbered "among the poor and helpless, because they had no one to defend them and no means of

³⁹² See Heb. 11.37.

³⁹³ For a short, but thorough, discussion of the debate concerning the date(s) of Isaiah, see Freeman, 193-195.

³⁹⁴ Isaiah 8.3. According to Koch, *The Prophets*, vol. 1, 105, this woman most probably acted as a seer in the Temple.

³⁹⁵ Isaiah 10.2.

³⁹⁶ Isaiah 1.21-23.

subsistence."³⁹⁷ What seems evident is that the legalized injustice "at the gate" to which Amos pointed to was also rampant in Judah. Isaiah accused the rulers of Judah to have established their political and economic structures on falsehood and legal institutions, which did not rectify the imbalances of economic privilege that continually benefited the rich.³⁹⁸ Disregarding the innocence of the poor and needy, these same rich made false claims in court. Thus, "much injustice was tolerated by bending the laws in favor of the rich because they were naturally inclined toward the people who shared the same values and came from the same backgrounds as they did."³⁹⁹

Isaiah's cry on behalf of the poor, the widows and the orphan is nothing less than a call to justice. He knows about the abuse and mistreatment inflicted upon these people, and goes about proclaiming God's vindication of these same people. From the very beginning of his pronouncements the prophet declares what ought to be done:

*Wash yourselves, make yourselves clean;
Remove the evil of your deeds from my sight.
Cease to do evil,
Learn to do good;
Seek justice,
Reprove the ruthless;
Defend the orphan [vindicate the fatherless],
Plead for the widows (Is. 1.16-17).*

³⁹⁷ E. Tamez. *Bible of the Oppressed* (Maryknoll, NY: Orbis Books, 1982): 71. See also F. Charles Fensham. "Widows, Orphan and the Poor in the Ancient Near Eastern Legal and Wisdom Literature," *Journal of Near Eastern Studies* 21 (1962): 129-139.

³⁹⁸ J. David Pleins. *The Social Vision of the Hebrew Bible* (Louisville, KY: Westminster John Knox Press, 2001): 257-258. See Isaiah 32.7.

³⁹⁹ Pleins, 258.

E. Jeremiah:

In 627-626 BCE a prophet emerged once again. According to the information given in 1.1-3, Jeremiah's first prophecy took place in the thirteenth year of Josiah (640-609 BCE). He further continued to prophesy through the reigns of Jehoiakim and Zedekiah, up to the destruction of Jerusalem, in the eleventh year of the latter's reign, 586 BCE.⁴⁰⁰

Born of a priestly heritage into an age of religious and moral declension, Jeremiah was a man of strong character, yet sensitive to the sins of his people, which he rebuked constantly. Various oracles warn that the economic corruption of the bureaucrats and merchants would lead to the downfall of the kingdom of Judah. Jeremiah contends that the rich acquired their wealth through fraud.⁴⁰¹ He further argues that in the process of accumulating wealth, the rich consistently violated the legal claims of the poor.⁴⁰² This legal injustice is not necessarily limited to the courts, however. Furthermore, the notion of legal injustice can include a broad range of offenses, "the accusation, therefore, would relate not only to injustices committed in regular legal cases but also to those committed in the general conduct of community business, in particular, in meetings at the city gate, under the guidance of the elders, among whom the rich and influential would hold a key place."⁴⁰³ However, the failure of the people of Judah to fulfill Yahweh's desires

⁴⁰⁰Freeman, 241.

⁴⁰¹Jeremiah 5.27-28a.

⁴⁰²Jeremiah 5.28.

⁴⁰³L. Wisser, *Jérémie: Critique de la Vie Sociale* (Geneva, Switzerland: Labor & Fides, 1982): 59.

for justice in society was the primary basis for judgment.⁴⁰⁴ Thus Jeremiah can declare:

*For if you truly amend your ways and your deeds,
if you truly practice justice between a man and his neighbor,
if you do not oppress the alien, the orphan (fatherless), or the
widow,
and do not shed innocent blood in this place,
nor walk after other gods to your own ruin,
then I will let you dwell in this place,
in the land that I gave your forefathers forever and ever (Jer.
7.5-7).*

Jeremiah powerful cry for the rediscovery of God' mandate towards the needy is the linchpin upon which the future of Judah hangs. When Jeremiah declares: "Do justice and righteousness, and deliver the one who has been robbed from the power of his oppressor. Also do not mistreat or do violence to the stranger, the orphan, or the widow; and do not shed innocent blood in this place,"⁴⁰⁵ he also presents the consequences for abusing those who are close to God's heart. We then read:

*But if you will not obey these words, I swear by Myself, declares the Lord, 'that this house will become a desolation'.*⁴⁰⁶

We see that, once again, the abuse of the needy brings forth retribution. Once more, among these needy were the widows who, as in the

⁴⁰⁴Wisser, 64.

⁴⁰⁵Jeremiah 22.3.

⁴⁰⁶Jeremiah 22.5.

previous century, were the victims of legal, and therefore economic, abuses.

F. Ezekiel:

In a number of instances throughout the Old Testament we find prophets making explicit references to earlier laws, without comment or transformation. The prophet Ezekiel was one such prophet. His primary message, addressed to the exiles in Babylon,⁴⁰⁷ condemned the abominations that were leading Jerusalem and Judah to ultimate destruction. Inasmuch as the conditions of the exiles were not that severe, since they had freedom of movement within Babylonia and the opportunity to engage in commerce, they questioned the prophecies of Ezekiel. He in turn answered them carefully, playing the role of a watchman and warning them of the impending judgment on Judah while proclaiming the hope of their ultimate restoration to the land of Israel.⁴⁰⁸ A contemporary of Jeremiah, whose similar message of warning and judgment was directed to those remaining in Jerusalem and Judah, Ezekiel warned the people that "if they continued to stray from the Lord's ways revealed in the statutes and commandments of the law, the Lord would discipline them through dispersion in order to bring them back to himself."⁴⁰⁹

⁴⁰⁷ For the dating of Ezekiel, see Harrison, *Introduction to the Old Testament*, 822-855; A. Malamat. "The Last Kings of Judah and the Fall of Jerusalem" *Israel Exploration Journal* 18 (1968): 137-156; R.E. Clements. "The Ezekiel Tradition: Prophecy in a Time of Crisis" in *Israel's Prophetic Traditions: Essays in Honor of Peter Ackroyd*. R. Coggins, A. Phillips and M. Knibb, eds. (London, England: Cambridge University Press, 1982): 119-136; Walter C. Kaiser, Jr. *Toward Old Testament Theology* (Grand Rapids, MI: Zondervan Pub. House, 1978); C.G. Howie. "The Date and Composition of Ezekiel" *Journal Of Biblical Literature*, Monograph Series 4, 1950; Ralph H. Alexander. *Ezekiel*. The Expositor's Bible Commentary. vol. 6. Frank E. Gæbelein, gen. ed. (Grand Rapids, MI: Zondervan Pub. House, 1986): 737-746.

⁴⁰⁸ Alexander, *Ezekiel*, 743.

⁴⁰⁹ Alexander, *Ezekiel*, 743.

Ezekiel 22.6-7 is a good example of the prophet's practice of condemning the people, most notably the leaders of the nation, because they had broken the explicit prohibitions of the Mosaic covenant. There we read:

Behold, the rulers of Israel, each according to his power (arm), have been in you for the purpose of shedding blood. They have treated father and mother lightly within you. The alien they have oppressed in your midst; the fatherless and the widow they have wronged in you.

It was because the people had abandoned the ways of God that judgment would befall them. The deliberate disobedience of the Mosaic covenant on the part of Judah's rulers shows how far they had strayed from God. The rulers ignored every warning and, because of their immorality, the whole nation was to be judged. "Each of the princes of Israel" (v. 6) has "used his power" to flaunt his disdain of the law. This reprehensible abuse of power, under God's economy, could not go on unpunished. This heedlessness, Ezekiel declares, is the cause for God's judgment on the nation. Once again, widows, among the weak, are said to have been wronged. Once again, people in authority have been seen deemed to go after what they may have had. And, all they may have had was either their dowry or their part of the inheritance, which would help them survive for a time.

G. Zechariah:

The sayings of this post-exilic prophet are precisely dated, as are those of his immediate predecessor, Haggai.⁴¹⁰ Two months after the latter's last recorded pronouncement, in October-November 520 BCE, Zechariah proclaimed his first prophetic message, with his final words being spoken in December 518 BCE.⁴¹¹

Zechariah's, and Haggai's, focus was the rebuilding of the temple and, "if historically palpable success is to be the yardstick, none of Israel's prophets were as successful as these."⁴¹² We discover, in fact, that his appeal to the people and their leaders bore fruit, for the temple was consecrated in 515 BCE. However, beyond this enthusiastic pursuit for the rebuilding of the temple, Zechariah understands covenant obligations as the demands of Yahweh. These, in turn, entailed the pursuit of justice. Thus, "it is the demand for justice toward the poor," among whom the widows figure prominently, "that became one of the pivotal aspects of the nation's relation to Yahweh, the negligence of which was a violation of the covenant, and led to the collapse of the covenant relationship."⁴¹³ This is why Zechariah, in true prophetic legacy, can proclaim:

Thus has the Lord of host said, "Dispense true justice, and practice kindness and compassion each to his brother; and do not oppress the widow or the orphan (fatherless), the stranger (resident alien) or the poor; and do not devise evil in your hearts one against another.

⁴¹⁰Koch, vol. 2, 160.

⁴¹¹Koch, vol. 2, 160; Freeman, 336.

⁴¹²Koch, vol. 2, 160.

⁴¹³Pleins, 80.

Yet, the response to such flagrant disobedience is not too far to find:

"And it came about that just as He called and they would not listen, so they called and I would not listen," says the Lord of hosts.

Once again, we discover that God protected the widows as part of this group of needy persons. Human nature was such that, unless reminders, through God's messengers, were given regularly, the abusive situations towards those in need would continue. Even when encouraging the people in the restoration of the temple, the care of the widows, orphans, and needy was central to a true demonstration of one commitment to the demands of the covenant.

H. Malachi:

After the early religious enthusiasm after the return from Babylon to Jerusalem has subsided, it was followed by a period of revival, which eventually saw the people, yet once again, become indifferent toward religion and morality.⁴¹⁴ This little prophetic book, therefore, presents "a call to repentance and humble obedience," along with "a stern warning of judgment to and rebellion."⁴¹⁵

The Jews had been home from exile in Babylon for about one hundred years. Yet, although cured of their idolatry, they had returned to their

⁴¹⁴Freeman, 347.

⁴¹⁵Freeman, 347.

former state of indifference and spiritual lethargy. Even more, they had started once again to abuse those who had no protector, that is, the daily wage earner and the poor. Thus, Malachi proclaims:

"Then I will draw near to you for judgment; and I will be a swift witness against the sorcerers and against the adulterers and against those who swear falsely, and against those who oppress the wages earner in his wages, the widow and the orphan (fatherless), and those who turn aside the alien (sojourner), and do not fear Me," says the Lord of Host Malachi 3.5

Here, God presents himself as a witness against those who go defy his decrees and think they can do as their ancestors had done. Of concern to God is the oppression of the needy, along side whom the widow is listed.

VII. Evaluation

Niditch has summarized quite well the position of women in ancient Israel. She says:

A woman in biblical times was expected to remain under the authority of a male at all times: as a child and virginal young woman, she lived in her father's home until she married; once married, she lived with her husband and, she fervently hoped for, bore and raised his children; and if widowed, she relied on her own male children, who inherited their father's property.⁴¹⁶

⁴¹⁶Susan Niditch. "The Wronged Woman Righted." *Harvard Theological Review* 72, 1-2 (January-April 1979): 145.

When this woman became a widow, her only hope of survival was to be taken care of by her male children. However, it seems that, more often than not, this may not have been the case, as she is often associated with the fatherless and the stranger. This association suggests they shared something in common. This common relationship can be deduced from an article by Lawrence Stager which deals with the notion of גֵּר.⁴¹⁷ While his treatment deals with the stranger, some of his findings are relevant to a better understanding of a widow. The גֵּר, commonly translated "sojourner, stranger, resident alien," but referred to by Stager as "client," was a man who was dwelling outside the geographical area of his own kin. Because he did not have the protection and support of his own family, the גֵּר needed to attach himself to a patron for his protection and for economic assistance.

The אֵלְמַטָּה, in many ways, was like the גֵּר in that she existed in a situation with no supporting kinship ties. Like the *almattu* of the Middle Assyrian Laws, her link to her husband's kin had been severed because there was no male of that family who had authority over her. As we have seen, Tamar had no husband, son or father-in-law who would take responsibility for her. When Judah told her to return to her paternal kin, he said, "Remain an אֵלְמַטָּה in your father's house" (Gen. 38.11). Judah here released Tamar from her bonds with his family until Judah's youngest son was old enough to perform the duty of the levirate. Yet, because she had been married, she no longer belonged under the authority

⁴¹⁷ Lawrence Stager. "Archaeology, Ecology, and Social History: Background Themes to the Song of Deborah" *Vetus Testamentum Supplement* 40 (Leiden, The Netherlands: E.J. Brill, 1988): 229-232.

of her paternal kin, as evidenced by Judah's sentence to burn Tamar, even while she dwelt in her **בֵּית־אָב**.⁴¹⁸

This is also what was understood by the ancient Israelites, as Numbers 30, which concerns vows made by women, illustrates. Every single vow made by a woman was subject to the approval of either her father or her husband. Only the vow of the **אַלְמָנָה**, or of a divorcée (**נִרְשָׁה**) was valid on its own (Num. 30.10). Implicit in that law was the acknowledgment that the **אַלְמָנָה** had no male authoritative figure to pass judgment on the validity of her vow.⁴¹⁹

The Hebrew **אַלְמָנָה**, then, like the **גֵּר**, existed on the fringes of society where kinship ties gave one identity, meaning and protection. However, unlike the **גֵּר**, the **אַלְמָנָה** lived in this liminal zone as a woman. Not only was she bereft of kin, but she was also without a male who ordinarily provided a woman with access to the public sphere.⁴²⁰

Because the true **אַלְמָנָה** had no means to support herself, since she had no son to care for her, the various laws explored indicate to us that the analogy and classification of widows with the weak is appropriate. Something had to be done to ensure that such women would be taken care of. Provision was therefore made for the **אַלְמָנָה** to participate in a dignified manner in the harvest and to have a part, albeit very small, within the community of Israel. And, because no one had come forward as her protector, Yahweh stepped forward and announced,

⁴¹⁸ Hiebert, 130.

⁴¹⁹ Hiebert, 130.

⁴²⁰ Hiebert, 130.

both in laws, in the wisdom literature, and through His prophets that He is the One Who vindicates the poor, among whom the אֱלֵפִים stands.

Ruth's story provides us with a common understanding of what was customarily done in regards to those in needs. Poor people could glean in the fields and, in some ways, gather some means of survival. However, the fact that a close-kin was able to both redeem Naomi's land and marry Ruth, thereby taking care of her, demonstrates that the levirate, at least then, was considered a legitimate means to address poverty of women who had no other means of support. The story, in fact, makes a point to show that both women were now taken care of, as Ruth's son is declared Naomi's and Ruth is married to Boaz who not only grants her a child, Obed, but also sees a grandchild, Jesse, who is none other than the father of [the future king] David.

In both the poetic and prophetic books we found a strong condemnation of the abuse inflicted on those who were needy, especially in the non-application of specific laws such as we saw in this study. It thus becomes quite evident that the care of widows, especially those who had no children to care for them, was a sacred trust which needed some very specific means of enforcement. Their economic well-being was at stake, and the situation needed to be addressed. Could, or should, a specific law be articulated so as to define the parameters under which certain categories of widows could be taken care of? Can we, then, look at the law of Deuteronomy 25.5-10 as that potential answer?

CHAPTER 3
DEUTERONOMY 25.5-10

I. Introduction

The law of Deuteronomy 25.5-10 is a very detailed and specific law which deals with the care of widows who have no children. It reads thus:

5. *When brothers live together and one of them dies and has no son, the wife of the deceased shall not be married outside the family to a strange man. Her husband's brother shall go in to her and take her to himself as wife and perform the duty of a husband's brother to her.*

6. *And it shall be that the first-born whom she bears shall assume the name of his dead brother, that his name may not be blotted out from Israel.*

7. *But if the man does not desire to take his brother's wife, then his brother's wife shall go up to the gate to the elders and say, "My husband's brother refuses to establish a name for his brother in Israel; he is not willing to perform the duty of a husband's brother to me."*

8. *Then the elders of his city shall summon him and speak to him. And if he persists and says, "I do not desire to take her,"*

9. *then his brother's wife shall come to him in the sight of the elders, and pull his sandal off his foot and spit in his face; and she shall declare, "Thus it is done to the man who does not build up his brother's house."*

10. *And in Israel his name shall be called, "The house of him whose sandal is removed."*

While levirate marriage sprang out of a wide background of primitive practices,¹ the Deuteronomic legislation is the only one which provided for it. In fact, the only recorded examples in the Old Testament are from the period before the establishment of the monarchy.² Phillips has argued that it is probable that by the time of Deuteronomy the practice of the levirate marriage may already have been unpopular and was widely rejected. According to him, Lev. 20.21 abolished it, the curse of childlessness being particularly appropriate, leading in turn to the priestly legislation's innovation of Num. 27.1ff. which permitted daughters to inherit property, and so continue the name of the deceased and sonless father.³

The tradition of covenant law was the basis for Israel's religion, a phenomenon which is altogether without parallel in ancient religions. This covenant law determined the character of Israelite belief, cult, and society.⁴ In this light, Wright can affirm that "for some of the social commandments, the answer lies in the nature of the socio-economic grounding of the covenant relationship."⁵ This relationship between Israel and Yahweh, far from being merely a conceptualized, spiritual bond, was very deeply rooted in the concrete circumstances of Israel's life -- social, economic and political. "The primary symbol of this," adds Wright, "was the land, and the primary locus of tangible

¹ Millar Burrows. "The Ancient Oriental Background of Hebrew Levirate Marriage" *Bulletin of the American School of Oriental Research* 77 (1940): 2-15.

² H.H. Rowley. *The Faith of Israel* (London, England: SCM Press Ltd., 1956): 19.

³ Anthony Phillips. "Some Aspects of Family Law in Pre-Exilic Israel" *Vetus Testamentum* 23, 3 (July 1973): 356.

⁴ John L. McKenzie. *A Theology of the Old Testament* (Garden City, NY: Doubleday & Co., Inc., 1974): 70.

⁵ Christopher J.H. Wright. "The Israelite Household and the Decalogue: The Social Background and Significance of Some Commandments" *Tyndale Bulletin* 30 (1979): 102.

realization of the privileges and responsibilities of the covenant relationship was the family."⁶ Hence, according to him, the Israelite laws which dealt with parents, adultery, stealing and coveting "should be seen . . . as designed to protect, externally and internally, the household-plus-land units upon which the covenant relationship, humanly speaking, rested."⁷

What, therefore, was the purpose of the law of the levirate? What relationship does it have with the family and the land? When and how was it applied? Since widowhood brings with it a loss of social status,⁸ how does this law attempt to correct this? A closer look at Deut. 25.5-10 should provide some answer(s), as well as a better understanding of this law's intention(s). Our approach will be from several angles in order to bring forward various elements pertinent to our investigation. Each of these elements is an integral part of the law under investigation and their bearing upon the law of Deut. 25.5-10 should be made evident as they unfold.

II. Deuteronomy: the Book

For McKenzie, the compilation of the Pentateuch reflects less the idea of covenant law than the later idea that no law was permanently valid in Israel unless it had been spoken to Moses by Yahweh.⁹ This

⁶Wright, "The Israelite Household and the Decalogue . . .," 102.

⁷Wright, "The Israelite Household and the Decalogue . . .," 102.

⁸Helena Znanięcka Lopata. "Widowhood: World Perspectives on Support Systems" in *Widows*, vol. 1. Helena Znanięcka Lopata, ed. (Durham, NC: Duke University Press, 1987): 18.

⁹McKenzie, *A Theology of the Old Testament*, 71.

compilation, far from being a complete collection of Israelite law, was meant to attribute all the laws which survived in writing to the promulgation by Moses of the words he heard from Yahweh.¹⁰ Whereas Leviticus and Numbers do not say anything as to Moses' involvement in the recording of events, statutes or other material, Exodus does so and "Deuteronomy makes it clear that its contents were substantially the work of Moses (Deut. 31.9ff., 24ff.)."¹¹

Comprised of an assemblage of material issuing from various periods of the wilderness wanderings, Deuteronomy should not be regarded as a "second law," as the English title seems to imply. "The work contains the essentials of Leviticus rewritten in such a manner as to make the more priestly and esoteric material amenable to the populace, and in this sense Deuteronomy can be said to comprise a popular version of the Levitical law, thereby approximating to something like an "Everyman's Torah."¹²

With a few exceptions, until the nineteenth century both Jews and Christians held that Deuteronomy was substantially Mosaic in origin. Then, with the rise of liberal criticism, the authorship of the book was assigned tentatively to the period of Josiah.¹³ The classic expression

¹⁰ McKenzie, *A Theology of the Old Testament*, 71.

¹¹ R.K. Harrison. *Introduction to the Old Testament* (Grand Rapids, MI: Wm. B. Eerdmans, 1969): 636.

¹² Harrison, *Introduction to the Old Testament*, 636-637.

¹³ Harrison, *Introduction to the Old Testament*, 640. For an overview of the criticism of the work of the Deuteronomist, from Deuteronomy to 2 Kings, see A.D.H. Mayes, *The Story of Israel between Settlement and Exile: A Redactional Study of the Deuteronomistic History* (New York, NY: SCM Press Ltd., 1983): 1-21. For a summary of the critical work on Deuteronomy alone see the introductory section in Mayes' commentary, *Deuteronomy - New Century Bible Commentary* (Grand Rapids, MI: Wm. B. Eerdmans Pub. Co., 1979): 25-108.

of this view was articulated by Julius Wellhausen and soon gained widespread scholarly acceptance. He maintained that the author of the composition, which for him comprised chapters 12 to 26, was a prophet, who compiled the material around 622 B.C. for the purpose of reforming the then current religious practices and to abolish the pagan high places in favor of centralized worship in Jerusalem. This author, according to Wellhausen, concealed his work in the Temple and permitted it to be "discovered" by Hilkiah the High Priest during some renovations. The content was found to be relevant to the contemporary social and religious situation, and the reforms described in 2 Kings 22 and 23 were the result.¹⁴ This theory, which at first was regarded as heresy, was soon accepted by the majority of scholars, thus becoming one of the more important tenets of classical liberal criticism of the Pentateuch.

As early as 1805, De Wette had proposed a seventh-century B.C. date for the composition of Deuteronomy, affirming that it was the law-book used by Josiah in his religious reforms.¹⁵ More recently, Nicholson drew attention to the discrepancies between the account in 2 Kings 22-23.5 and 2 Chron. 34-35.19, passages which both describe the religious reform of Josiah. The sequence in Chronicles is somewhat different from Kings. In 2 Kings we read that Josiah first begins to seek the Lord and purge the land of foreign god and goddesses, and then discovers the law book. In his reconstruction, taking into account the history of the

¹⁴ Julius Wellhausen, *Die composition des Hexateuchs und der historischen bücher des Alten Testaments* (Berlin, Germany: G. Reimer, 1899): 76.

¹⁵ See Mayes, *Deuteronomy*, 98-102, for a discussion, using form-critical arguments, demonstrating that the finding of the law book is not part of the basic account of Josiah's reform.

Assyrian empire at the time, Nicholson theorizes that Josiah's reform had two phases. The first was basically an independence movement. Due to weakening Assyrian control, Josiah began to rid the land of Assyrian cult emblems and practices, since these were signs of their sovereignty. The second stage of the reformation, the purifying of the cult of Yahweh, came in response to finding the law book. This law book is characterized in 2 Chronicles as the Book of the Law of the Lord that has been given through Moses.¹⁶ Although the two accounts differ, Nicholson concludes that there is a historical connection between the laws of Deuteronomy and the law book found by Josiah.¹⁷

Yet other scholars proposed different views.¹⁸ Basing his argument on form-critical grounds, Mayes dates Deuteronomy to the late monarchic period in Judah.¹⁹ Berry, assuming that the legal code recovered in the Temple was the "Holiness Code,"²⁰ suggested that Deuteronomy was post-exilic in origin.²¹ Kennett, for his part, proposed a date in the time of Haggai and Zechariah, that is, around 520 B.C.²² Pedersen and other members of the Uppsala school argued that the book reached its final form around 400 B.C., although they recognized that parts of it existed in writing at a much earlier period.²³

¹⁶ 2 Chron. 34.14.

¹⁷ E.W. Nicholson. *Deuteronomy and Tradition* (Philadelphia, PA: Fortress Press, 1967): 8.

¹⁸ Harrison, *Introduction to the Old Testament*, 640.

¹⁹ Mayes, *Deuteronomy*, 88-103.

²⁰ Lev. 17-26.

²¹ As presented by Harrison, *Introduction to the Old Testament*, 641.

²² Kennett, *Deuteronomy and the Decalogue*, 6-8 as presented by Harrison, *Introduction to the Old Testament*, 641.

²³ Johannes Pedersen. *Israel: Its Life and Culture*. vols. III-IV. 1926; reprint (London, England: Oxford University Press, 1964): 96.

Some scholars, however, assigned an earlier date to the composition of Deuteronomy. For example, Ewald placed the writing of Deuteronomy in the time of Manasseh,²⁴ while Westphal put it during the earlier period of the reign of Hezekiah.²⁵ More recently, Von Rad held that Deuteronomy may have arisen among the "country Levites" and that it was completed shortly after 701 B.C.,²⁶ while Rogerson has asserted that it may have been largely the work of Samuel, before the establishment of the monarchy.²⁷ A similar position was adopted by Brinker, who regarded the legislations of Deuteronomy as basically Mosaic, but with supplements made by priests and judges from decisions given at various sanctuaries.²⁸ Following Eissfeldt, W.F. Albright, although adhering to the broad pattern of liberal criticism, assigned the Song of Moses (Deut. 32.1-43) to the time of Samuel.²⁹

The internal evidence used to pinpoint the date of Deuteronomy more precisely is the law book's demand for centralization. Deuteronomy 12 opens the law book by instructing the Israelites several times that they are to seek the Lord only "at the place which the Lord your God shall choose" (Deut. 12.5, 11, 14, 18, 21, 26). For Van Houten, these laws are clearly teaching something new because they necessitate the reform of the old laws of slaughter which presupposed that every city

²⁴ Heinrich Ewald. *The History of Israel*, vol. 1 (London, England: Longman, Green, and Co., 1878): 127.

²⁵ Westphal, *The Law and the Prophets*, 304 as presented by Harrison, *Introduction to the Old Testament*, 641.

²⁶ Gerhard Von Rad. *Studies in Deuteronomy* (London, England: SCM Press Ltd., 1953): 66.

²⁷ Rogerson, *The Old Testament Problem*, 42 as presented by Harrison, *Introduction to the Old Testament*, 641.

²⁸ R. Brinker, *The Influence of Sanctuaries in Early Israel* (Manchester, England: Manchester University Press, 1946): 189ff.

²⁹ W.F. Albright, *The Biblical Period From Abraham to Ezra*, 45 as presented by Harrison, *Introduction to the Old Testament*, 641.

had a sanctuary. A new procedure seems to be instituted when, for example, the laws instruct the Israelites to slaughter their domestic animals as they used to slaughter their wild animals (Deut. 12.15,16).³⁰ Quite without proof, Wellhausen and his followers have assumed that Jerusalem was the place where the cult was intended to be centralized.³¹ However, as Skinner points out, the book of Deuteronomy itself laid no stress whatever upon the peculiar claim of Jerusalem to be the sole place of worship.³² Rowley, for his part, has observed that there is nothing in Deuteronomy to the effect that the central and solitary legitimate sanctuary was to be located in Jerusalem.³³ For Welch, there is no prescription in the book that stipulated that sacrifices could only be offered upon one altar.³⁴ "Accordingly," writes Harrison, "it is important to notice that Deuteronomy 12.14, which speaks of the place that the Lord will choose in the jurisdiction of one of the tribes, does not necessarily imply that there will be one, and only one, tribal territory where God may be worshipped."³⁵ He further points out that although the building of one official altar on Mount Ebal was commanded in Deut. 27.1ff., the law of Deut. 16.21-22 entertained the existence of several such places in Canaan.³⁶ Harrison therefore concludes that

³⁰ Christiana Van Houten. *The Alien in Israelite Law*. JSOTSupp series 107 (Sheffield, England: Sheffield Academic Press, 1991): 74.

³¹ Julius Wellhausen, *Prolegomena to the History of Israel*. Allan Menzies and J. Sutherland Black, transl. (New York, NY: Meridian Books, 1957): 268.

³² J. Skinner, *Prophecy and Religion: Studies in the Life of Jeremiah*, 167 as presented by Harrison, *Introduction to the Old Testament*, 642.

³³ H.H. Rowley, *Studies in Old Testament Prophecy Presented to T.H. Robinson*, (New York, NY: Scribner, 1950): 166.

³⁴ Adam C. Welch, *The Code of Deuteronomy - A New Theory of Its Origin* (London, England: J. Clarke & Co., Ltd, 1924): 31.

³⁵ Harrison, *Introduction to the Old Testament*, 642.

³⁶ Harrison, *Introduction to the Old Testament*, 643.

in view of the peculiar difficulties attaching to the liberal view of the authorship and date of Deuteronomy, it seems important to emphasize at this juncture that there is nothing in the work that can be proved conclusive to be incompatible with substantial Mosaic authorship. The legal content is primitive and authoritarian in nature, and is thoroughly permeated with the moral, ethical, and humanitarian concepts inherent in the Covenant relationship.³⁷

Harrison's somewhat adamant affirmation needs to be balanced by the positions of more recent conservative scholars who, while still holding to an inspired text, do allow for revisions of the "original" text. It is thus worth quoting Arnold and Beyer at length, who, talking about the Pentateuch in general, state:

Conservative scholars generally take one of three positions. First, some date the Pentateuch to the Mosaic era, but allow for various degrees of post-Mosaic material. The basic structure of the Pentateuch was established by Moses, or under Moses' supervision. Later alterations and additions occurred in line with recognized ancient Near Eastern literary procedures. Minor changes, such as spelling and editorial revisions, continued to occur until Samuel's day (approximately 1050 B.C.).

Second, some conservative scholars date the final form of the Pentateuch to a period between Joshua and Solomon (as late as 930 B.C.). Most of the Pentateuch is thought to be Mosaic, but substantial amount of post-Mosaic material were also included.

Third, other conservative scholars believe the Pentateuch acquired its current form relatively late in Israel's history (ninth to fifth centuries B.C.). These scholars recognize much that is ancient in these books. But they believe the Pentateuch

³⁷Harrison, *Introduction to the Old Testament*, 648.

grew as a result of later generations adapting Mosaic material at important crisis moments in Israel's history.

...The evidence clearly credits Moses with the substance of these books. He is its source, its originator, its authorizer. However, terms such as "author" and "authorship" are inappropriate when referring to ancient Near Eastern literary products, since they carry modern implications that were absent in antiquity.

In some case Moses may have initiated a literary tradition that he later simply monitored. In Deuteronomy 31.9 he wrote the basic document and then entrusted its safe-keeping to the priests (see also Deut. 24.8). The priests may have preserved and expanded the material, but Moses was its source . . .³⁸

As can be seen from this brief presentation, there has been considerable doubt as to the actual date of the book in both liberal and conservative circles, and "while most adherents of the Wellhausenian position would posit a seventh century B.C. date for the origin of Deuteronomy, an increasing number of scholars have finally become aware of the need for a more flexible position on the whole matter than once was the case."³⁹ Thus, while the analysis of the book of Deuteronomy has been extensive, this overabundance has not resulted in a consensus concerning authorship, date(s) of composition, or *Sitz im Leben*. "The wide variety of opinion," writes Van Houten, "testifies to some extent to the ambiguity of the evidence."⁴⁰

In light of the discovery of important treatises of some major kings of Near Eastern antiquity, in 1963 Kline emphasized the structural

³⁸ Bill T. Arnold and Bryan E. Beyer. *Encountering the Old Testament* (Grand Rapids, Mi: Baker Books, 1999): 72-73.

³⁹ Harrison, *Introduction to the Old Testament*, 642.

⁴⁰ Van Houten, 68.

unity and integrity of Deuteronomy.⁴¹ Comparison of Hittite suzerainty treaties with the form of the Covenant agreement at Sinai was not new; what was, however, was the application of this concept to Deuteronomy as a whole. Kline was able to demonstrate that "when Deuteronomy is viewed holistically or as an integer, it exhibits on a large scale the complete covenantal formulation of the ancient Near East . . . [and] As such it can no longer be considered the product of a series of redactions of the document that produced the Josianic reformation."⁴²

Shortly thereafter Von Rad opened a new chapter in form-critical research on Deuteronomy by noting that Deuteronomy has a fourfold structure:

- a) a historical introduction in chapters 1-11;
- b) the reading of the law in chapters 12.1-26.15;
- c) the sealing of the covenant in chapter 26.16-19; and
- d) the blessings and the curses in chapters 27-28.⁴³

Analogous to ancient Near Eastern treaty documents, Deuteronomy, as well as other literature in the Old Testament, seems to have been influenced by this treaty tradition.⁴⁴ Similarities between Deuteronomy and the Hittite and Assyrian texts have given rise to two theories concerning the genre and unity of Deuteronomy. The first, articulated by

⁴¹ M.G. Kline, *Treaty of the Great King*, 13ff. as presented by Harrison, *Introduction to the Old Testament*, 648.

⁴² Harrison, *Introduction to the Old Testament*, 648-649.

⁴³ Gerhard Von Rad. "The Form-Critical Problem of the Hexateuch" in *The Problem of the Hexateuch and Other Essays*. E.W. Trueman Dicken, transl. (Edinburgh, Scotland: Oliver and Boyd, 1966): 26-33.

⁴⁴ See D.J. McCarthy. *Treaty and Covenant*. Anchor Bible 21 (Rome, Italy: Pontifical Biblical Institute, 1963).

Weinfeld, argues that Deuteronomy is formally an oration based on the treaty form represented by the Esarhaddon treaty (dated 672 BC).⁴⁵ The second, advocated by Mayes, argues that although the treaties between a sovereign and a vassal influenced the form, language and theology of Deuteronomy, it is not closely related to one treaty in particular. Therefore, it cannot be maintained that Deuteronomy is the work of one author on that basis.⁴⁶

Whatever the case may be, covenant stipulations deal with matters that define and control the relationship between the two parties involved in the treaty. What we find in Deuteronomy is that the laws contained therein are much more extensive in that they seek to govern the whole communal life of the people.⁴⁷

The form in which the individual laws of Deuteronomy are cast distinguishes them from other Pentateuchal laws. In both the Priestly collection and in the Book of the Covenant, the laws are styled as the words of God to Moses and Aaron. In Deuteronomy, on the other hand, the laws are given as words of Moses. Although clearly invested with God's authority, it is through Moses as the intermediary that the Israelites come to know God's law.⁴⁸ They further differ from other law collections in that they can be characterized as "preached law."⁴⁹ Almost always formulated using the personal form of address, very few laws are

⁴⁵ M. Weinfeld. *Deuteronomy and the Deuteronomistic School* (Oxford, England: The Clarendon Press, 1972): 59-157.

⁴⁶ Mayes, *Deuteronomy*, 32-34.

⁴⁷ Van Houten, 69.

⁴⁸ Van Houten, 69-70.

⁴⁹ Gerhard Von Rad. *Studies in Deuteronomy* (London, England: SCM Press Ltd., 1953): 16.

formulated in the impersonal casuistic style. Furthermore, the laws of Deuteronomy are usually accompanied by motivational clauses, thus encouraging obedience "by explaining the rationale behind the law, by reminding the Israelites of their history, inculcating virtue, or stating the blessings and curses that will follow on disobedience or obedience."⁵⁰

Their character as "preached law" is also evident in that some are clearly unenforceable by the courts. Laws such as those requiring generosity to the poor (Deut. 15.7-11) are a typical example. In other instances some laws appear utopian. For example, the regulations for the offices of judge, priest, king and prophet (Deut. 16.18-18.22) read like the constitution for an ideal society. Thus, Van Houten observes, "the transmitters of these laws were not the judges or elders who adjudicated cases at the city gate, and their goal is not so much to regulate daily life as to present the way daily life ought to be lived."⁵¹

The content and parenetic style of the Deuteronomic laws point to their originating in a public setting. For Von Rad, the preaching style indicates a cultic setting.⁵² Other scholars, analyzing the parenetic style of the individual laws, point to the festival of covenant renewal at Shechem as their original *Sitz im Leben*.⁵³ However, although Moses gives instructions in Deuteronomy for a covenant-making ceremony at

⁵⁰ Van Houten, 70.

⁵¹ Van Houten, 70.

⁵² Von Rad, *Studies in Deuteronomy*, 14. See also E.W. Nicholson. *Deuteronomy and Tradition* (Philadelphia, PA: Fortress Press, 1967): 46-47.

⁵³ For a discussion of the scholarship on Deuteronomy's relationship to the covenant renewal ceremony see Nicholson, 37-57.

Shechem, this does not necessarily mean that there was a yearly covenant renewal festival or that Shechem was the place where these laws originated. In his study of the theme of centralization in Deuteronomy, Wenham notes that Shechem was never the central sanctuary, but rather that it was the place where traditions of inheriting the land were localized. He cites as evidence the promise to Abraham (Gen. 12.6,7), God's appearance to Jacob after his return to Canaan (Gen. 35.1-4) and Jacob's purchase of a plot of ground (Gen. 33.19), all of which are located at Shechem. Joshua's renewal of the covenant (Josh. 8.30; 24) also occurs at Shechem, as does Rehoboam's coronation as king (1 Kgs. 12.1-17). The crowning of Rehoboam as king at a time when Jerusalem had been established as a sanctuary containing the ark especially leads him to conclude that Shechem was the site appropriate for covenant renewals which had to do with the gaining of the land. On this basis he also concludes that there is no contradiction between the call for a central sanctuary and the naming of Shechem as the place for a covenant renewal ceremony.⁵⁴

We can thus conclude that the overall structure of Deuteronomy is related to the structure of the international treaties of the Hittite and later Assyrian empires. We can also add that in scope its laws resemble the laws of a law code rather than a treaty document. As to their style, the laws are unusual in that they almost always employ the personal form of address and abound in motivational clauses. This peculiar character points to an original *Sitz im Leben* of public preaching which would most certainly be undertaken by someone with

⁵⁴ Gordon J. Wenham. "Deuteronomy and the Central Sanctuary." *Tyndale Bulletin* 22 (1971): 103-18.

authority, because these laws, though spoken by Moses, are portrayed as deriving from God himself.⁵⁵

III. Patrimony and Inheritance

In the Old Testament, continuity of the family was assured through primogeniture. After the father's death the first-born son became the head of the family, and in family registers he was often distinguished by this title.⁵⁶ From Deut. 21.17 it appears that along with this title the first-born was to receive a double portion of the inheritance, as well as the title to the patrimonial plot of land, the remainder to be distributed among younger siblings.⁵⁷ Perpetuating the household, which, as a total unit included persons, livestock and land, is encapsulated in the *name* of the *paterfamilias*, was of crucial importance. According to the stipulation in Deut. 21.15-17, this custom could not be waived in favor of a younger son born of a preferred wife.⁵⁸ The wording suggests that the father made the appropriate dispositions, possibly in writing, on a specific and solemn occasion.⁵⁹

Although not specifically mentioned, associated with this double portion of the inheritance was certainly the care of the mother, of

⁵⁵ Van Houten, 71.

⁵⁶ See, for example, Ex. 13.2; Num. 13.12.

⁵⁷ See Deut. 21.17; 2 Kings 2.9.

⁵⁸ Deut. 21.15-17 = "If a man has two wives, the one loved and the other unloved, and both the loved and the unloved have borne him sons, if the first-born son belongs to the unloved, then it shall be in the day he wills [makes to inherit] what he has to his sons, he cannot make the son of the loved the first-born before the son of the unloved, who is the first-born. But he shall acknowledge the first-born, the son of the unloved, by giving him a double portion of all that he has, for he is the beginning of his strength; to him belong the right of the first-born."

⁵⁹ Joseph Blenkinsopp. "The Family in First Temple Israel" in *Families in Ancient Israel* (Louisville, KY: Westminster John Knox Press, 1997): 72.

younger brothers and of unmarried sisters.⁶⁰ Since patrimonial domain had to be passed on intact to the next generation, a patrilineal system such as that of Ancient Israel required alternative arrangements if the head of a household had no son. From Num. 27.8-11 we find that if an Israelite left behind him no son, but only daughters, these daughters inherited from their father; and if there was no daughter, then the brothers of the dead man inherited. If there were no brothers, the uncle on the dead man's father's side inherited, while if there was no such uncle, the nearest blood relation came into the inheritance.⁶¹ However, to prevent the land from passing into the possession of another tribe, daughters who were heiresses must, according to Num. 36.6-8, marry only men of the tribe of their father, or even, as Oehler points out, "if the passage is to be understood in a narrow sense, only men of their father's house, probably in as close a relationship as was admissible considering the laws of forbidden intermarriages (Lev. 18.6-18; 20.9-21)."⁶²

Like work itself, land was a major feature of an Israelite family household. The family's immovable or real property, that is, the land as well as whatever was more or less permanently built on it, was the *sine qua non* for the livelihood and survival of an agrarian family. Thus, the specific identification of each family household with its inherited domain (*nahalah*, "patrimony" or "inheritance") was exceptionally strong,

⁶⁰ Gustav Friedrich Oehler. *Theology of the Old Testament* (New York, NY: Funk & Wagnalls, 1883): 234.

⁶¹ Blenkinsopp, "The Family in First Temple Israel," 72.

⁶² Oehler, 234.

to the point that family land was to be held in perpetuity.⁶³ For agriculturists, the idea of the inalienability of family property was no less a function of the environmental constraints of Palestinian highlands than was the need for extended family groups. The diversity of the ecosystems of the hill country meant that virtually every family household experienced a different set of challenges in establishing a productive subsistence strategy. Consequently, under such conditions, it made the most adaptive sense for property to be transferred to those most familiar with the appropriate technologies, cropping patterns, planting times and so forth of a particular piece of land. Thus, according to Meyers, "the passing of property to those who had grown up on it and knew it best was the most efficient way to exploit successfully the marginal habitats of the hill country settlements."⁶⁴ Furthermore, the functional advantage of keeping real property within the small kinship group that farmed it was manifest in parent-child dynamics, and in traditional ways of preventing extra-family land transfers. Hence, land-tenure regulations were eventually encoded in biblical legal stipulations often considered among the most puzzling in scripture. We find that land was held in patrimonial units, so as to not pass out of the control of the family group. Institutions such as levirate marriage,⁶⁵ jubilee provisions⁶⁶ and redemptive procedures for both land and building⁶⁷ must be seen in that light. These institutions "can best be understood as customs arising to prevent group/land

⁶³ Carol Meyers. "The Family in Early Israel" in *Families in Ancient Israel*. (Louisville, KY: Westminster John Knox Press, 1997): 19.

⁶⁴ Meyers, 19-20.

⁶⁵ Deut. 25.5-6; Ruth 4.10.

⁶⁶ Lev. 25.10, 28.

⁶⁷ Lev. 25.23-34.

fission, which would render holdings too small for viability or otherwise compromise the delicate balance between individual habitat and its successful exploitation."⁶⁸

It is interesting, therefore, to note the absence of epigraphal evidence from Palestine for the sale or purchase of real property, especially when compared to the ample presence of such documents dealing with the land transactions of Canaanite and other neighboring peoples.⁶⁹ Likewise, in contrast with the detailed Pentateuchal legal materials dealing with restitution of property, there are no laws that regulate land transfer except through inheritance.⁷⁰ The daughters of the Zelophehad incident, the book of Ruth and the story of Naboth's vineyard can be seen as very strongly illustrating the motif of family land retention.⁷¹ This inalienability of family property is a recurring concept in biblical law and lore and, as Meyers wrote,

Its very unmanageability in socioeconomic reality probably should be viewed as a sign of its authentic origins in the exigencies of highland farm life. Policies and folklore encouraging the integrity of family lands thus are not depictions of idealized behavior, never carried out, although that may have been the case for the urban context in which the Bible reached its final canonical form. But in the period of Israelite beginnings, in a socioeconomic landscape composed of tiny hamlets and villages, inalienability was a powerful way to link land resources with labor resources and to integrate property with family. The

⁶⁸ Meyers, 20.

⁶⁹ Christopher J.E. Wright. *God's People in God's Land: Family, Land, and Property in the Old Testament* (Grand Rapids, MI: Wm. B. Eerdmans Pub. Co., 1990): 56-57.

⁷⁰ S. Herbert Bess. "Systems of Land Tenure in Ancient Israel." Ph.D. Dissertation (University of Michigan, 1963): 91; see Lev. 25.23-34.

⁷¹ Meyers, 20.

identity of any family unit was thus inseparable from its land, which was the material basis of its survival.⁷²

It seems that the practice was for the land to remain in the kinship group. As already observed, if the owner could not retain his land, the next of kin had the obligation of buying it. This was an instance of the ~~לְקַח~~. But, unlike the obligation to avenge murder or injury, the purchase of land became an option rather than an obligation. This obligation or option, the observance of which would prevent land monopolies from arising, was passed along the line of kinship until a purchaser was found. This custom is deduced from the episodes of Boaz and Ruth,⁷³ of Naboth,⁷⁴ and of Jeremiah and Hanamel.⁷⁵ In each instance there is clear reference to an unformulated obligation to buy and sell land within proximate kinship.⁷⁶ McKenzie postulates that the law of the jubilee (Lev. 25.28) was probably an obscure allusion to the ancient custom of holding land within the family.⁷⁷

The economic base of the Israelite household resided in family land ownership.⁷⁸ The traditions of land distribution⁷⁹ and the laws protecting land ownership⁸⁰ point to the inherent economic value of this commodity. Land was to be transferred from generation to generation,

⁷² Meyers, 21.

⁷³ See Ruth 3.12-13; 4.1-12.

⁷⁴ See 1 Kg. 21.

⁷⁵ See Jer. 32.

⁷⁶ Roland De Vaux. *Ancient Israel*. vol. 1 (New York, NY: McGraw-Hill Book Co., 1965): 166-167.

⁷⁷ McKenzie, *A Theology of the Old Testament*, 239.

⁷⁸ Zvi Ben Barak. "Meribaa and the System of Land Grants in Ancient Israel" *Biblica* 62 (1981): 73-91. See also Christopher J.H. Wright. *God's People in God's Land* . . .

⁷⁹ See Jos. 13-22.

⁸⁰ The law of redemption (Lev. 25.24-55); the law of jubilee (Lev. 25.10-12, 28); and the law of levirate marriage (Deut. 25.5-10; Ruth 4.10).

normally through inheritance of the patrimony (אֲדָמָה) at the father's death. This family land was not a commodity to be bought and sold because the viability of the family depended on it. "Without land," writes Perdue, "it was impossible for most families to survive intact. Without land, families fragmented and members dispersed, seeking to survive by joining related households as family members, by becoming marginal members of other households to work as debt servants and day laborers, or by joining the underclass of the poor who lived off the charity of Israelite households."⁸¹

IV. Coveting of Property

According to Phillips, the Decalogue⁸² was Israel's *criminal law-code*. For him, "crimes" were offenses against the whole community, inasmuch as they were offenses against the relationship with Yahweh upon which the community was founded and depended.⁸³ It is highly significant, Phillips notes, that, although penalties are not specified in the Decalogue itself, all offenses for which there was a judicial death penalty in the Old Testament law were either direct breaches of the commandments, or were closely related to them.⁸⁴ However, Phillips' insistence on making the judicial death penalty the essential defining criterion of his category of criminal law is found wanting. For example,

⁸¹ Leo G. Perdue, "The Israelite and Early Jewish Family: Summary and Conclusions" in *Families in Ancient Israel* (Louisville, KY: Westminster John Knox Press, 1997): 169. See Ex. 21.2-11; Lev. 25.35-55; 2 Kings 4.1; and Neh. 5.1-5.

⁸² See Ex. 20.2-17 and Deut. 5.6-33.

⁸³ Anthony Phillips. *Ancient Israel's Criminal Law: A New Approach to the Decalogue* (New York, NY: Schocken Books, 1970): 48.

⁸⁴ Phillips, *Ancient Israel's Criminal Law*, 49.

neither the eighth⁸⁵ nor the tenth⁸⁶ commandments, as traditionally understood in their present form, could carry a death penalty. Jackson, in his thorough examination of theft in Ancient Israel, has convincingly refuted the existence of a legal death penalty for ordinary theft.⁸⁷ Thus, if one is to maintain that the death penalty was the essential factor in distinguishing "crimes" against the national relationship with God, then either one must abandon the view of the Decalogue as comprised entirely of "crimes" in that sense, since two of its prohibitions are non-capital, or else one must find a way of reinterpreting the eighth and tenth commandments so as to make them capital offenses.⁸⁸

When looking closely at the tenth commandment, we find that the distinction between the Decalogue prohibition and human judicial procedure is very great. No legal penalties existed at all in any human court of the Old Testament period for coveting, or mere evil *intention* of any sort, yet coveting was undoubtedly regarded as sin and, therefore, liable to divine judgment.⁸⁹ Still, the tenth commandment prohibits something which could not by its very nature be sanctioned by actual penalties. For Wright, "this very fact underlines the importance of this prohibition, since in this respect it is unique among the

⁸⁵ Ex. 20.15 = "You shall not steal."

⁸⁶ Ex. 20.17 = "You shall not covet your neighbor's house; you shall not covet your neighbor's wife or his male servant or his female servant or his ox or his donkey or anything that belongs to your neighbor."

Deut. 5.21 = "You shall not covet your neighbor's wife, and you shall not desire your neighbor's house, his field or his manservant, his ox or his donkey or anything that belongs to your neighbor."

⁸⁷ Bernard S. Jackson. *Theft in Early Jewish Law* (New York, NY: Oxford University Press, 1972): 144-154.

⁸⁸ Wright, "The Israelite Household and the Decalogue . . .," 106.

⁸⁹ See Gen. 6.5; Num. 11.4-24; I Sam. 16.7.

commandments in its radical, ethical thrust."⁹⁰ Furthermore, the content of the tenth commandment is also significant because it specifies the neighbor's household and, in the Deuteronomic version, his land. The desires that led to land grabbing are thus prohibited at source. One may only speculate as to some of the methods used by the wealthy to acquire land at the expense of smallholders. Some may not have been technically illegal. For example, such procedures as foreclosures on mortgages; debt-bondage, which, even if a Jubilee were in operation twice a century, would still have been devastating on many households; as well as the redemption of land from impoverished kinsmen, which, although legal, when ruthlessly pursued became a fundamental violation of the moral requirements of the relationship between Yahweh and Israel and stemmed from ambitions that contradicted the tenth commandment. It is not surprising, therefore, later on in the history of Ancient Israel, to find "*prophets* who, in the name of Yahweh, pronounced *divine* judgment on offenses about which *human* courts were unable, or, through corruption by the offenders themselves, disinclined, to do anything."⁹¹ For instance, Micah 2.2 shows this awareness of what the real sin was that lay behind the external acts of acquisition -- covetousness.⁹²

It is therefore quite evident that the tenth commandment perceives very clearly the kind of social calamity that would befall a man and his household if the commandment were disregarded and he became

⁹⁰ Wright, "The Israelite Household and the Decalogue . . .," 111.

⁹¹ Wright, "The Israelite Household and the Decalogue . . .," 111.

⁹² Mic. 2.2 reads:

*They covet fields and seize them.
And houses, and take them away.
They rob a man and his house,
A man and his inheritance.*

dispossessed. A good example of this can be found in Job 30. There we read how Job's loss of property and family utterly destroyed his status in the local judicial assembly in stark contrast to chapter 29's informative picture of his prominent role in it. This is why Wright can affirm that, "disregard of the tenth commandment entailed for many a loss of standing and participation in a sphere of social life where the obligations of the relationship with God impinged on the practical realities of society -- the local administration of justice."⁹³

In contrast to the common practice in the Ancient Near East, there seems to have been no legal provision for a widow in Israel to succeed to her husband's estate other than by recourse to levirate marriage (Deut. 25.5-10). Coveting and appropriation of the late husband's property by someone else was certainly something which needed to be reckoned with and which needed to be addressed. It is therefore hardly surprising that widows and their children are mentioned so often as being in need of protection and charity.⁹⁴

V. Paternal and Communal Authority

Considering the context described by Deut. 12-26, Christina Van Houten proposed that the society presupposed in the laws was an urban society. She argued that although the economic base of the society was still predominantly agricultural, there were now fortified cities upon which the rural population depended for safety, for a market and for

⁹³Wright, "The Israelite Household and the Decalogue . . .," 112.

⁹⁴Blenkinsopp, "The Family in First Temple Israel," 72.

administrative matters. She thus affirms that "the urban community, rather than the tribe, had become the basic political unit."⁹⁵ One of the social changes found in Deuteronomy was the change in judicial authority, particularly a shift in authority from the *paterfamilias* to the community and/or state.⁹⁶

Urbanization in Ancient Israel was accompanied by a weakening of the tribal structures of society.⁹⁷ As a result, the patriarch's authority became limited, as is indicated by the regulations concerning the right of the first-born,⁹⁸ and by the legislation which required that parents take a rebellious son to the gate of the town when they had a serious complaint against him.⁹⁹ We find that the authority to enact the death penalty now lay with the elders of the town and not with the *paterfamilias*, as in the case of Judah and Tamar (Gen. 38).¹⁰⁰ Willis, however, questions the conclusion that this change included the transfer of all authority over life and death from an Israelite father to the broader community. The primary passages cited in support of the currently-held position regarding a father's judicial authority over life and death are Deut. 21.18-21 (the rebellious son) and 22.13-21 (the

⁹⁵ Van Houten, 73.

⁹⁶ Timothy M. Willis. "The Authority of the *Paterfamilias* and the Deuteronomic Code." Paper presented at the Society of Biblical Literature annual meeting - Biblical Law Group (November 1996): 1.

⁹⁷ According to F.S. Frick, *The City in Ancient Israel*. Society of Biblical Literature, Dissertation Series, 36 (Missoula, MT: Scholars Press, 1977): 110, this disintegration was not caused by the process of urbanization, but was a consequence of the heavy economic burden of the monarchy.

⁹⁸ Deut. 21.15-17.

⁹⁹ Deut. 21.18-21.

¹⁰⁰ For a discussion of this account as an example of the judicial authority of the head of the family to impose the death penalty on members of his extended family, see Keith W. Whitelam, *The Just King: Monarchical Judicial Authority in Ancient Israel*. JSOTSupp Series, 12 (Sheffield, England: JSOT Press, 1979).

bride accused of non-virginity).¹⁰¹ These are often compared with the stories of Dinah in Genesis 34 and Judah and Tamar in Genesis 38. In the former, Levi and Simeon are said to act strictly in defense of their family, indicating that the matter was handled as "family law." In the latter, Judah is said to function as an autonomous judge over his family when he calls for Tamar's execution by burning. By contrast, the pair of laws from Deuteronomy shows fathers (and mothers) coming to the city elders for judgment. For many these are proof that such action by the parents implicitly precludes the possibility that they could have meted out their own justice. So, based on the differences between the Genesis stories and these laws, in conjunction with several other passages, researchers have arrived at a broad transformation in authority, from family to state. This transformation is explained as a natural development brought on by urbanization and/or the emergence of the power of the monarchy.¹⁰²

Willis proposes that parents may have been quite reluctant to execute their sons; their physical and economic well being was at stake. On the one hand, the father would be accusing one who was supposed to perpetuate his name,¹⁰³ while, on the other hand, the mother would be accusing one who was probably expected to care for her in her old age.¹⁰⁴

¹⁰¹ See Louis M. Epstein. *Sex Laws and Customs in Judaism* (New York, NY: KTAV Publishing House, Inc., 1948): 165 and Alexander Rofé. "Family and Sex Laws in Deuteronomy and the Book of the Covenant." *Henoah* 9, 2 (1987): 143-144.

¹⁰² Willis, "The Authority . . .," 2.

¹⁰³ See Deut. 25.6-7; Ruth 4.5, 10; 2 Sam. 14.4-11.

¹⁰⁴ See 2 Kg. 4. Willis, "The Authority . . .," 18.

The law releasing family members from being liable for each other's crime¹⁰⁵ seems to indicate a weakening cohesion of the family.¹⁰⁶ Thus, in place of the family, the city became the responsible body. For example, in Deut 21.1-9 it was the city closest to the murder victim which had to carry out the ritual of atonement.¹⁰⁷

To Cairns, the role of the elders is an indication that the material is ancient.¹⁰⁸ In the Ancient Near East the true source of law was the class of judges and the assembly of the elders, those who knew and preserved the tradition of the land. Thus the real power was in the corporate assembly.¹⁰⁹ Fishbane, on his part, contends that the references to "judges" and "officers" in Deut. 16.18-20, 17.8-13, 19.15-21, 20.1-9 and 25.1-3 reflect a social-juridical stratum superimposed over a stratum which spoke of "elders," as in 19.11-13, 21.1-4, 6-9, 18-21, 22.13-21 and 25.5-10.¹¹⁰ Whatever the case may be, until professional judges were appointed, probably under Jehoshaphat's reform,¹¹¹ the local elders heard all such cases, and determined what action to take against the accused. Therefore when an execution was ordered, it was carried out by the whole adult male community; and when damages were payable, their amount was assessed by the court.¹¹²

¹⁰⁵ Deut. 24.16.

¹⁰⁶ For further discussion of the economy and society presupposed by Deuteronomy, see Max Weber. *Ancient Judaism* (Glencoe, IL: Free Press, 1952): 66-67.

¹⁰⁷ For this reason, according to Frick, 125, the laws in Deuteronomy should more properly be called municipal laws.

¹⁰⁸ See 19.12; 21.2. Ian Cairns. *Word and Presence - A Commentary on the Book of Deuteronomy* (Grand Rapids, MI: Wm. B. Eerdmans Pub. Co., 1992): 217.

¹⁰⁹ Thomas and Dorothy Thompson. "Some Legal Problems in the Book of Ruth." *Vetus Testamentum* 18, 1 (Jan. 1968): 83.

¹¹⁰ Michael Fishbane. *Biblical Interpretation in Ancient Israel* (Oxford, England: The Clarendon Press, 1985): 244, n. 41.

¹¹¹ 2 Chron. 19.5.

¹¹² Phillips, "Some Aspects of Family Law in Pre-Exilic Israel," 350.

What we find in Deuteronomy is a system of judicial professionals (Deut. 16.18-20) imposed upon the older system of city-gate justice, restricting ambiguous cases requiring cultic recourse to the judiciary at the central sanctuary (Deut. 17.8-9). It is not specified how or whether the professional judiciary was to function alongside the older system of clan justice. Yet, it was precisely at the gate that the older system of clan justice, in the hands of the elders, operated.¹¹³ We may thus assume that the imposition of professional judges at the local level may have initiated a conflict over spheres of judicial authority. Recognizing this conflict, Weinfeld tried to negate the problem by reconstructing separate jurisdictions for the professional judiciary and the clan elders, as if each operated simultaneously alongside the other, with the elders now restricted to matters of family law.¹¹⁴ However, such a synchronic harmonization overlooks diachronic issues involved in the composition of the legal corpus. It seems doubtful that the two systems of judiciary administration--that of the elders and that of the professional judicial appointees of Deut. 16.18-20--ever coexisted historically. Thus, most scholars have viewed the laws in which the elders are active as an earlier and pre-Deuteronomistic stratum of the

¹¹³ See Deut. 21.19; 22.15; 25.7; Job 29.7; Ruth 4.1, 11; Lam. 5.14.

¹¹⁴ M. Weinfeld. *Deuteronomy and the Deuteronomistic School* (Oxford, England: The Clarendon Press, 1972): 234. See also M. Weinfeld. "Elders" in *Encyclopedia Judaica*, vol. 6 (Jerusalem, Israel: Encyclopedia Judaica, 1972): 578-580; Jacob Milgrom. "The Ideological and Historical Importance of the Office of Judge in Deuteronomy" in *Essays on the Bible and the Ancient World*, Alexander Rofé and Yair Zakovitch, eds., vol. 3 (Jerusalem, Israel: E. Rubinstein, 1983): 138; Hanoah Reviv. *The Elders in Ancient Israel: A Study of a Biblical Institution* (Jerusalem, Israel: Magnes Press, 1989): 61-70.

legal corpus.¹¹⁵ However, that widely held position has recently come under challenge from two different perspectives.

The first has been articulated by Eckart Otto who has argued very convincingly that these laws are Deuteronomic and that the professionalized judiciary coexisted with the administration of justice by the elders.¹¹⁶ His claim, however, seems harmonistic since Deut. 16.18 installs the professionalized judiciary precisely at the site where the elders would exercise their public function, pulling the bench out from under them, so to speak. The second, proposed by Jan Christian Gertz, has recently reversed the conventional view to argue that the laws involving the elders (Deut. 21.18-21; 22.13-21; and 25.5-10) actually are post-Deuteronomic and exilic in origin. As such they would be later than, not earlier than or contemporary with, the Deuteronomic system of a professionalized judiciary.¹¹⁷ His proposal, however, also leads to some difficulties and questions. Why should post-Deuteronomic traditions subvert Deuteronomic law by overturning the leading judicial role assigned to a professionalized judiciary in 16.18-20? Why, only in the exilic period, would an ancient motif of cuneiform law, the casuistic law of the disrespectful son¹¹⁸ enter the legal corpus (Deut. 21.18-21) as a late straggler, when other cuneiform motifs, adultery and rape laws, were already present (Deut. 22.22-29)?

¹¹⁵ See Alexander Rofé. "The Law about the Organization of Justice in Deuteronomy (16.18-20; 17.8-13)" *Beth Mikra* 65 (1976): 199-210.

¹¹⁶ Eckart Otto. "Soziale Verantwortung und Reinheit des Landes: Zur Redaktion der kasuistischen Rechtssätze in Deuteronomium 19-25" in *Prophetie und geschichtliche Wirklichkeit im alten Israel* Rudiger Liwak and Siegfried Wagner, eds. (Stuttgart, Germany: W. Kohlhammer, 1991): 290-306.

¹¹⁷ Jan Christian Gertz. *Die Gerichtsorganisation Israels im deuteronomischen Gesetz* (Göttingen, Germany: Vandenhoeck & Ruprecht, 1993): 173-225.

¹¹⁸ See CH 195.

Addressing some of these concerns, Willis argues that it does not really make sense to say that local authorities were concerned with giving themselves power formerly reserved for the *paterfamilias*. In fact, each elder was a *paterfamilias*. He proposes that the authority once reserved for individual "fathers" now rested in the hands of a collective of "fathers."¹¹⁹ He further points to some limitations in the authority of an Israelite head of the household, limitations which seem to reflect the principle that a concern for one's community should supersede the personal interests of an individual family.¹²⁰ Such a principle eventually expanded from the local community to the entire nation. The "community" was no longer just local, but national. Thus, for Willis, "the common scholarly opinion which says that the D Code exhibits a desire to transfer authority from the individual family to the state does appear to be substantiated by the evidence considered."¹²¹ He is quick to add that, although a national understanding of community is being advanced, no centralized mechanisms for addressing offenses are mentioned in these laws. He writes: "Admittedly, such mechanisms are mentioned elsewhere (i.e., Deut. 16.18-20); but ... a centralized perspective does not always require the use of centralized institutions for its realization."¹²²

¹¹⁹ Willis, "The Authority ...," 13.

¹²⁰ Willis, "The Authority ...," 31.

¹²¹ Willis, "The Authority ...," 31.

¹²² Willis, "The Authority ...," 31.

While crime is that action which the community prohibits and punishes in its name because it endangers the common welfare, torts¹²³ can also seriously jeopardize the smooth running of community life. Of utmost importance was the quick healing of broken local relations following any particular injury, especially in light of the restrictive social conditions under which the Israelites lived. Consequently, in Ancient Israel torts, as well as crimes, were treated as matters of general public concern and were heard in the local court, not left to individuals or families to settle as they saw fit.¹²⁴ However, family law, which is itself best seen as a self-contained section within general customary law, was dealt with according to a very different procedure. In contrast to crime or tort, under family law the courts had no jurisdiction, the matter being left entirely in the hands of the individual head of the house. Phillips explains that the reason this was so was "that only free adult males had legal status in Ancient Israel, and so the right to appear before the elders in court. All other persons whether women, children or slaves, were in effect regarded as the personal property of the head of the household, and were dependent on him, not the courts, for their protection."¹²⁵

At first glance Phillips' proposal seems attractive, yet simplistic. If the court of elders had no jurisdiction in family matters, why is the childless widow going to the elders to present her case? The only reasonable answer is that she wants justice. What seems

¹²³ A wrongful act or damage (not involving a breach of contract), for which a civil action can be brought

¹²⁴ Phillips, "Some Aspects of Family Law in Pre-Exilic Israel," 350.

¹²⁵ Phillips, "Some Aspects of Family Law in Pre-Exilic Israel," 350.

to be happening is that the elders are not judging as to the validity of the *levir*, but, rather, are witnesses to the proper administration of the inheritance of the deceased. This seems to strengthen the idea that the law of the levirate was given to protect the woman from the dead husband's brother conniving in order to obtain the property of his dead brother. What is interesting to note is that Deut. 25.5-10 provides an exceptional instance of the courts taking note of a failure to implement customary family law, though they are powerless to do anything about it. We observe that if the brother refuses to carry out the duty of the levirate marriage, his deceased brother's widow can have him brought before the court of elders. They may seek to persuade him to fulfill his obligation under customary law but, if he still refuses, all the elders could do was to permit his public humiliation by the woman. They could not enforce the marriage.¹²⁶

VI. Who is a Brother?

The reference to brothers dwelling together in Deut. 25.5-10 is interesting.¹²⁷ While in the Middle Assyrian Laws there are several references to coparcenary,¹²⁸ one cannot but ask why the limitation of "brothers dwelling together" is added in the Deuteronomic law. No such hint is present in the previous passage (Gen. 38) nor in the subsequent case of Boaz and Ruth. Scholars who hold that the levirate is a relic of

¹²⁶Phillips, "Some Aspects of Family Law in Pre-Exilic Israel," 350.

¹²⁷On the basis of the phrase *כִּי־יֵשְׁבוּ אֲחִים יַחְדָּו* (Deut. 25.5), the Talmud excludes half-brothers on the mother's side as well as younger brothers born subsequent to the death of the widow's husband; See B. Baba Bathra 109b.

¹²⁸Custom whereby members of the same family live and work together.

polyandry¹²⁹ make much of the custom of communal living. Driver and Miles argue that, if coparcenary is not accepted, why is a consortium of brothers mentioned here? They suggest that, perhaps, the writer was copying old material and that he left these words in. They explain that "it is clear that inheritances were originally impartible and that individual ownership of land was comparatively late and was indeed probably unknown when the custom of the levirate was first recorded."¹³⁰ Thus, for them, when the law which now stands in Deuteronomy was originally laid down, brothers generally did dwell together, and the Deuteronomic compiler left the phrase where it is either *per incuriam* or because he wished to restrict the custom as far as possible.¹³¹

For Oehler, the meaning of the phrase "when brothers dwell together" is somewhat more ambiguous. The presupposition of "dwelling together" could mean that the brother who accepts the levirate duty is unmarried and thus as yet has no house of his own. Or, it is presupposed that the brother lived in the same place as his dead sibling, and was therefore in the position to take up the levirate duty.¹³² Others have proposed different alternatives. The deceptively simple "When brothers dwell together" could be interpreted to mean: a) alive at the same time, b) living in the same town, or c) brothers who continue to dwell as a

¹²⁹ Exercise of an old custom whereby a woman was married or mated by several brothers at the same time.

¹³⁰ Godfrey Rolles Driver, and John C. Miles. *The Assyrian Laws* (Germany: Scientia Verlag Aalen, 1935-1975): 243.

¹³¹ Driver, *The Assyrian Laws*, 243.

¹³² Oehler, 234-235.

consortium upon the family estate following the death of the *paterfamilias*.¹³³

Another possible explanation for this, according to Thompson, may be found in the Middle Assyrian Law §33. It reads:

[If] a woman is still dwelling in her father's house (and) her husband is dead and [she] has sons, [she shall dwell in a] house [belonging to them where she chooses. If] she has no [son, her father-in-law shall give her] to whichever [of his sons] he likes or, if he pleases, he shall give her as a spouse to her father-in-law. If her husband and her father-in-law are [indeed] dead and she has no son, she becomes (in law) a widow; she shall go whither she pleases.

This ordinance deals with the case of a woman whose husband is dead, who lives in her father's house, and who has no sons. It is then prescribed that, under these circumstances, the father-in-law may give her as a wife to one of his other sons. Only when the father-in-law is also dead is the woman declared to be a widow, in which case she is allowed to go where she pleases. When the father-in-law is alive and the woman has no sons, she is not considered to be a widow, and is accordingly bound under the levirate.¹³⁴ However, because of the poor state of the tablet on which this law is inscribed, much is left to speculation and many blanks have been filled in. The biggest difference which is evident between this law and Deuteronomy, from what is inscribed, is that the woman has sons. So, while the possibility exists

¹³³See David Daube. "Consortium in Roman and Hebrew Law." *Juridical Review* 42 (1950): 71-91.

¹³⁴Thompson, "Some Legal Problems in the Book of Ruth," 89-90.

that she could have been given to one of her dead husband's brothers, or even to her father-in-law, the purpose in doing so would not have been for the bearing of a son. Furthermore, we also find that the woman is dwelling in her own father's house and not with her dead husband's family. What is most important to observe, though, is that the limits under which the law is binding are not specified. The typical situation under which the law would normally be used seems to be described. More specifically, because of the nature of casuistic law, "it is giving the basis of the law as answering a specific need."¹³⁵

According to Cruveilhier, when Deuteronomy speaks of brothers living together, it is speaking of brothers who have not yet come into their inheritance and who have not yet established families of their own, separate from the paternal estate.¹³⁶ If the father-in-law of the bride whose husband, his son, died, and the brothers had already come into their inheritance and established households of their own, then it would have been the dead man's responsibility to provide beforehand for his own wife and anyone else in his household. No apparent obligations would have fallen on the brothers. If the father was alive, however, and the son who died had been living in his father's household, that is, if he had still been dependent on his father for his own living, then it was the head of the household, the father, who was responsible for all the members of that household, including his dead son's wife.¹³⁷

¹³⁵Thompson, "Some Legal Problems in the Book of Ruth," 90.

¹³⁶P. Cruveilhier. "Le Levirat chez les Hébreux et chez les Assyriens" *Revue Biblique* 34 (1925): 526.

¹³⁷Thompson, "Some Legal Problems in the Book of Ruth," 90.

Scholars agree that the most common endogamous marriage combined the households of two brothers.¹³⁸ Therefore the bride and the groom were cousins, not necessarily blood relatives, but at least legal relatives. Thus the words "uncle" or "father's brother," in many kinship systems, referred to a covenant or business partner, not necessarily a sibling. In the world of the Bible the relationship between a man and his uncle was as important as the relationship between a man and his father.¹³⁹ In this context, according to Murphy and Kasdan, the uncle's son habitually had a legal right to marry his parallel cousin.¹⁴⁰ Thus, very often when Genesis describes marriage, it describes cross-cousin marriage.¹⁴¹ For example, Nahor married his cousin to establish a bond with his uncle.¹⁴² And, if Rebekah was Nahor's daughter¹⁴³ rather than Bethuel's,¹⁴⁴ then Isaac married his uncle's brother's daughter, or his cousin.¹⁴⁵

Kinship, however, could be close or distant. In Gen. 38.8-10, Onan was the natural brother of the deceased, while in Ruth, neither Boaz, nor the original relative responsible for the women was from the

¹³⁸G.P. Murdock. *Social Structure* (New York, NY: Free Press, 1965): 260-283. Fox, R. *Kinship and Marriage: An Anthropological Perspective* (London, England: Penguin Books, 1967): 188-207. R.A. Oden. "Jacob as Father, Husband and Nephew: Kinship Studies and the Patriarchal Narratives" *Journal of Biblical Literature* 102 (1983): 198. M. Donaldson. "Kinship Theory in the Patriarchal Narratives: The Case of the Barren Wife" *Journal of the American Academy of Religion* 49 (1981): 84. L. Holy. *Kinship, Honour and Solidarity: Cousin Marriage in the Middle East* (Manchester, England: Manchester University Press, 1989): 21.

¹³⁹Oden, 197; McCarter Kyle. "The Patriarchal Age" in *Ancient Israel: A Short History from Abraham to the Roman Destruction of the Temple*. H. Shanks, ed. (Englewood Cliffs, NJ: Prentice Hall, 1988): 14-15.

¹⁴⁰R.F. Murphy and L. Kasdan. "The Structure of Parallel Cousin Marriage" in *Marriage, Family and Residence*. P. Bohanan and J. Middleton, eds. (Garden City, NY: Natural History Press, 1968): 186.

¹⁴¹See Gen. 24; 27.46-28.2.

¹⁴²Gen. 11.29.

¹⁴³Gen. 24.48; 29.5.

¹⁴⁴Gen. 24.15, 24.

¹⁴⁵Gerhard Von Rad. *Genesis: A Commentary* (London, England: SCM Press, 1972): 157. Oden, 194.

immediate family.¹⁴⁶ According to Benjamin, the kinship relationship was an established institution in Israel and throughout the Ancient Near East.¹⁴⁷ Seitz, when looking at kinship in the context of Deut 25.5-10, considered kinship and proximity as dependent on circumstance. He proposed that "in Hebrew, the kinship circumstance is sandwiched between the two parts of the circumstance proximity, i.e., 'dwell ... together'... For example, the brother-in-law's responsibilities of Naomi and Ruth's relative does not begin until the two women move back to Israel from Moab."¹⁴⁸ Thus, kinship was not defined specifically as blood relations, but as affinity. And, in the larger context of Ancient Israel, which claimed affinal descent from the same ancestors, brotherhood extended, by degrees, to all members of the community.

VII. Marriage and Family

In the Old Testament we often find two issues linked together: that of having children and that of inheritance, and the same seems to have been the case throughout the Ancient Near East. However, the way the two were reconciled varied greatly. Whereas the purpose and result of Babylonian marriage, which was based on monogamy, was to encourage childlessness and so make the expedient of adoption much more attractive, the Old Testament laws on marriage allowed polygamy and so considerably reduced the likelihood of childlessness.¹⁴⁹ It is evident that, because of economic reasons, polygamy was anything but the norm.

¹⁴⁶Ruth 3.12.

¹⁴⁷Benjamin, 245; see also De Vaux, vol. 1, 271.

¹⁴⁸Seitz, as presented by Benjamin, 245.

¹⁴⁹Jans Jochen Boecker. *Law and the Administration of Justice in the Old Testament and Ancient East* (Minneapolis, MN: Augsburg Pub. House, 1980): 120.

However, the possibility was there for a man to have more than one wife, and/or concubines, and so assure progeny for himself. In light of this, the Israelite family can better be understood as being a "blood-community,"¹⁵⁰ and consequently adoption was rarely, if at all, customary. This explanation, though, does not appear to be totally satisfactory, for nothing is ever said about the practice in the Old Testament. The only glimpse we have is that of Abraham who tried to adopt his servant Eliezer.¹⁵¹ For Boecker, therefore, "the ultimate reason for the absence of adoption in the Old Testament must be theological."¹⁵² In the Old Testament's mind, having descendants was a sign and an expression of God's blessing, and since it was so, one could not force the hand of God by supplying his own progeny. We could then say with Boecker that, "adoption was clearly regarded as an unlawful human manipulation designed to substitute by one's own means for God's blessing."¹⁵³ Thus, the role and centrality of the household in Israel's experience depended on her relationship with Yahweh.

The following diagram may illustrate this relationship¹⁵⁴:

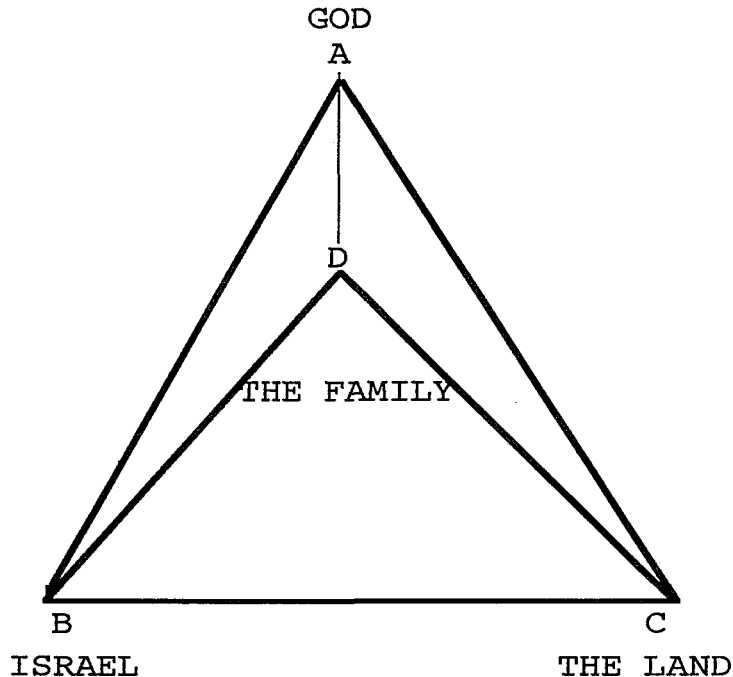
¹⁵⁰Boecker, 121.

¹⁵¹Gen. 15.2-4.

¹⁵²Boecker, 121.

¹⁵³Boecker, 121.

¹⁵⁴Wright, "The Israelite Household and the Decalogue . . .," 103.



The outer triangle, for Wright, represents the three major relationships in Israel's theological self-understanding: the primary relationship between Yahweh and Israel (AB); God as the ultimate owner of the land (AC)¹⁵⁵; and the land as given to Israel as an inheritance (CB).¹⁵⁶ The basic unit of Israelite social kinship structure (BD) was the family. As such, various institutions, like the internal operation of family law, the laws of inheritance, and the levirate marriage, protected it.¹⁵⁷ The family was also the basic unit of Israelite land-tenure (CD). A good example of this is the land division texts in Jos. 13-21. Therefore, because of the relationship God had with the land, and because He had given it to His people, the Israelite families benefited from the inalienability principle and the related institutions of land

¹⁵⁵ See Lev. 25.23.

¹⁵⁶ See Deut. 4.21.

¹⁵⁷ Wright, "The Israelite Household and the Decalogue . . .," 104.

redemption and jubilee.¹⁵⁸ "These family-plus-land units," comments Wright, "the lower triangle BCD, can then also be shown to have been the basic fabric upon which Israel's relationship with God rested."¹⁵⁹

The family, therefore, was of pivotal importance in the implementation of the covenant relationship. In large measure the continuity of that relationship was entrusted to the didactic and catechetical functions of the heads of the households.¹⁶⁰ Also, it was "sacramentally" symbolized in the consecration and redemption of the first-born son.¹⁶¹ Therein, among other things, lies the purpose of the levirate, which was to produce a son who would carry the name of the deceased husband and, in tangible ways, inherit the family property. In view of the pivotal role the household played in the nexus of theological and socio-economic interrelationships, it is not surprising to find that the Israelite landowner and subordinate members of his household should be conscious of a moral and, in some cases, legal, responsibility towards the family as a whole with respect to the family land, a responsibility parallel and related to their primary responsibility to God himself. Wright explains further by stating: "a man's responsibility to his family and its property was not limited to his immediate circle of living kin, but extended into the past and the future."¹⁶² In the same vein, Brichto writes:

¹⁵⁸ See Lev. 25.

¹⁵⁹ Wright, "The Israelite Household and the Decalogue . . .," 104.

¹⁶⁰ See Deut. 6.7; 11.19; 32.46-47.

¹⁶¹ See Ex. 13.2, 12-15.

¹⁶² Wright, "The Israelite Household and the Decalogue . . .," 114.

The family was attached to the soil . . . Laws of primogeniture, succession, inheritance rights, indivisibility and inalienability of real estate, the sacrilegious nature of the crime of moving a landmark all derive from this concept of the family and its real holdings as a unit in any given generation (its horizontal modality) and as a unit extending from its first ancestors to all future progeny (its vertical modality).¹⁶³

A good example is that of Naboth. The sense of responsibility to one's ancestors that shaped an Israelite's use of his land is epitomized in his reply to Ahab.¹⁶⁴ In other words, an Israelite was not the sole owner of his plot of land; it belonged to the whole family line.¹⁶⁵

VIII. Solidarity

The strong sense of corporate solidarity and community dominated Israel's and early Judaism's social and religious world.¹⁶⁶ The understanding of corporate identity and community that shaped people's relationships and lives was produced by the social and economic interdependence of members of the household. In it, individual will and needs merged into the collective will and needs of the larger whole. One's behavior affected the whole, and this was especially true of the

¹⁶³H.C. Brichto. "Kin, Cult, Land and Afterlife - Biblical Complex." *Hebrew Union College Annual* 44 (1973): 5.

¹⁶⁴1 Kg. 21.3 reads: "But Naboth said to Ahab: 'The Lord forbid me that I should give you the inheritance of my fathers'."

¹⁶⁵Wright, "The Israelite Household and the Decalogue . . .," 115.

¹⁶⁶Johannes Pedersen, III-IV, 263-310; J.R. Porter, "The Legal Aspects of the Concept of 'Corporate Personality' in the Old Testament." *Vetus Testamentum* 15, 3 (July 1965): 361-380; H. Wheeler Robinson, "The Hebrew Conception of Corporate Personality" in *Werden und Wesen des Alten Testaments*, Vols et al, eds., *Beihefte zur Zeitschrift für die alttestamentliche Wissenschaft* 66 (1936): 49-62; Hans Walter Wolff. *Anthropology of the Old Testament* (Philadelphia, PA: Fortress Press, 1974): 214-222. However, see also J.W. Rogerson, "The Hebrew Conception of Corporate Personality: A Re-Examination." *Journal of Theological Studies*. 21 (1970): 1-16.

head of the household, who embodied within himself the whole of the household.¹⁶⁷ "This collective good," in Perdue's words, "transcended the good of any individual member."¹⁶⁸ Furthermore, the marginal economic viability of many households produced an even greater sense of solidarity among their members¹⁶⁹ and in situations of economic duress, day labor, slavery, charity, and prostitution often became the only options for survival.¹⁷⁰

The defining nature of the theological understanding of what it meant to be Israel obligated households to support, not to oppress or neglect, debt servants, slaves, sojourners, resident aliens, widows, the fatherless and the Levites. Their liberation from bondage became the fundamental faith of the community and led Israelites to remember their experiences as oppressed sojourners, resident aliens and slaves in Egypt.¹⁷¹ Within this understanding, it was Yahweh, the God of the exodus liberation, who freed the slaves, listened to the cries of the oppressed, and was their defender.¹⁷² This exodus faith became the theological grounding of the covenant obligations of the law and the administration of justice.¹⁷³ This understanding was the basis for Israel's moral requirements as set forth by Yahweh. These, in turn, were largely carried out in relationship by the members of the household. Even marginal members, while "outsiders," were still connected to the

¹⁶⁷ Ex. 20.5-6; Jos. 7.16-26.

¹⁶⁸ Leo G. Perdue, "The Household, Old Testament Theology, and Contemporary Hermeneutics" in *Families in Ancient Israel* (Louisville, KY: Westminster John Knox Press, 1997): 237.

¹⁶⁹ Perdue, "The Household . . ." 237.

¹⁷⁰ Perdue, "The Household . . ." 238.

¹⁷¹ Ex. 22.21; 23.9; Deut. 10.19; 23.7.

¹⁷² Ex. 22.26.

¹⁷³ Perdue, "The Household . . ." 238-239.

family through their labor, bearing of offspring and occasionally even by marriage and perhaps through adoption.¹⁷⁴ This moral responsibility also extended beyond the immediate household to the larger society, that is, the clans and tribes, and even to non-Israelites. It seems that the purpose of ethical action was not individual good fortune but rather the welfare of the community, beginning with the household and extending outward.¹⁷⁵ Thus, the commandment to love one's neighbor as oneself extended to include even the resident alien, and was actualized in deeds that supported the integrity of the existence not only of the household but also of the marginal poor who lived outside the family's immediate protection.¹⁷⁶ When this commandment was extended outward to its largest boundaries of responsibility, it embraced the marginalized poor, who included the sojourner, the day laborer, the resident alien, the widow, the fatherless and the Levite.¹⁷⁷ Best presented in Deuteronomy, this corporate responsibility is expressed in the social terms, "there shall be no poor among you," and provides a theological rationale for such a responsibility: "since the Lord will surely bless you in the land which the Lord your God is giving you as an inheritance to possess."¹⁷⁸

¹⁷⁴Perdue, "The Household . . ." 238.

¹⁷⁵Perdue, "The Household . . ." 238.

¹⁷⁶See Lev. 19.18, 34.

¹⁷⁷Perdue, "The Household . . ." 238.

¹⁷⁸Deut. 15.4.

IX. What's in a Name?

In Ancient Israel someone's name was a sort of double of the person who bore it.¹⁷⁹ As long as the name could be perpetuated in some way the individual was considered to still exist. As the biblical text of Deut. 25.5-10 plainly shows, the principal aim of the Levirate marriage was that a son might be born who would take the dead husband's name, and so keep him alive. Closely linked with this, as is implied in this law and the story of Ruth, was the object of preserving the family property intact. Here, therefore, is evidenced a very strong awareness of the solidarity of the family based on ties of kinship and the bond of property¹⁸⁰ but which does not, however, postulate "corporate personality" as understood by Wheeler Robinson¹⁸¹ and Pedersen.¹⁸²

There is probably no better text which could be quoted to show the closeness, even the identity, of "name" and reality than the opening lines of the Babylonian Creation story: "When on high the heaven had not been named, firm ground below had not been called by name."¹⁸³ Here, quite clearly, the giving of the name is identified with the creation of the reality itself.¹⁸⁴ In Ancient Israel we find this same understanding

¹⁷⁹ Gerhard Von Rad. *Old Testament Theology*. vol. 2 (London, England: SCM Press Ltd., 1965): 96.

¹⁸⁰ Joshua R. Porter. "The Legal Aspects of the Concept of 'Corporate Personality' in the Old Testament." *Vetus Testamentum* 15, 3 (July 1965): 377.

¹⁸¹ Wheeler Robinson, H. "The Hebrew Conception of Corporate Personality," 49-62.

¹⁸² Pedersen. *Israel*, I-II, 90-93.

¹⁸³ "The Creation Epic" E.A. Speiser, transl. in *Ancient Near Eastern Texts Relating to the Old Testament*. James B. Pritchard, ed. (Princeton, NJ: Princeton University Press, 1969): 60-61, Tablet I, lines 1-2. See also p. 69ff., Tablet VI, line 120 to Tablet VII, line 144, where the 50 names of Marduk are presented.

¹⁸⁴ Thompson, "Some Legal Problems in the Book of Ruth," 87.

of a man's "name."¹⁸⁵ According to Pedersen, this concept of "name" developed towards possession of progeny and property.¹⁸⁶ Thus, in Israel a man's "name" came to mean his property. This was such a profound understanding that his name achieved, thereby, an existence separate from his own person.¹⁸⁷ On the other hand, his person was continued through his progeny. The effort to maintain one's name, therefore, became precisely the effort to keep progeny and property, that is, name and person, together. Another way to put this is that every man's existence and purpose was to keep one's property within his immediate family. This is most poignantly expressed in the tragic words of the woman of Tekoa, who complains to David that one of her sons is going to be killed for the murder of the other: "and so they would destroy the heir also. Thus they will extinguish my coal which is left, so as to leave my husband neither name nor remnant on the face of the earth."¹⁸⁸

Accordingly, we can see that in Ancient Israel fertility governed descent, and descent preserved the patriarchal or family name. Under normal circumstances, the patriarch's rank and authority within the household passed, upon his death, to a son, most often the eldest, chosen by the patriarch himself prior to his demise.¹⁸⁹ Along with this, the family property was to be preserved, as it was associated with the man's name. Furthermore, the permanent character of property ownership

¹⁸⁵ See 1 Sam. 18.30; 2 Sam. 7.9; 1 Kg. 5.11; 2 Chron. 26.8; and especially Isaiah 51.5.

¹⁸⁶ Pedersen, vols. I-II, 95-96 and 245-246.

¹⁸⁷ Thompson, "Some Legal Problems in the Book of Ruth," 87.

¹⁸⁸ 2 Sam. 14.7.

¹⁸⁹ Ron E. Tappy. "The Law Behind the Decalogue: Understanding the Commandments as a Code of Kinship." Paper presented at the Society of Biblical Literature annual meetings - Biblical Law Group (November 1996): 12.

was also very much at stake in the Hebrew levirate, so much so that the expressed purpose given in Deuteronomy for the custom is that the "name not be blotted out in Israel." As Neufeld also points out, "name" apparently refers to the inheritance itself,¹⁹⁰ and can refer to the property as well as the name. Although the levirate attempts to "raise up the name" of the dead husband through a legal fiction, which we will analyze shortly, we find that neither the name of Er in the Judah-Tamar story, nor the name of Mahlon in the Ruth-Boaz story, is mentioned in the genealogies of Perez and Obed. The names that Perez and Obed carry are those of their real fathers, Judah and Boaz. Furthermore, we should add that

- a) Israelites did not name their children after ancestors, and there is no case in the Bible of a name being explicitly given to commemorate another person;
- b) Israelites did not have family names, which in any event could have been equally transmitted by the living brother's own progeny;
- c) Israelite genealogies only rarely show recurrence of a name in a family list;
- d) patronymics, except for eponymous ancestors, normally go back only one or a few generations.¹⁹¹

For these reasons, we may ask whether the word $\square\text{ז}$ might signify something other than "name." Could it be "posterity" or even "progeny"?¹⁹² "We might conclude, then," writes Thompson, "that perhaps 'name' ought not to be taken simply in the modern sense."¹⁹³

¹⁹⁰E. Neufeld. *Ancient Hebrew Marriage Laws* (London, England: Longmans, Green & Co., 1944): 47.

¹⁹¹Etan Levine. "On Intra-familial Institutions of the Bible." *Biblica* 57 (1976): 558.

¹⁹²Levine, "On Intra-familial Institutions of the Bible," 558.

¹⁹³Thompson, "Some Legal Problems in the Book of Ruth," 85.

X. Removal of the Sandal and Spitting in the Face

One of the first things which becomes evident as we look at Deut. 25.5-10 is that the duty of the brother of the dead man was not imperative. He could, if he so wished, avoid it, but by doing so he was to be subjected to a degrading ceremony called the "loosening of the shoe."¹⁹⁴ Despite the considerable amount of literature on the significance of this action, there still remain some unresolved questions; for example, what is the symbolic meaning of the gesture and how does this act relate to "the spitting in the face" in the same context?¹⁹⁵ Scholars have offered four possible meanings.

The first such explanation, although still popular among some contemporary scholars, is found in the 19th century commentary of A. Knobel, who wrote: "Das Ausziehen des Schuhs bedeutet . . . Verzicht auf ein Bezitsrecht."¹⁹⁶ The idea behind this is that by removing the sandal "the brother-in-law [will] abstain from performing his duty as levir."¹⁹⁷ The significance of the act is derived by a direct comparison between this gesture and a similar one in Ruth 4.7. However, while the gesture and the situation appear similar (shoe removal and childless widow), there are important differences between the two passages that should not be overlooked. For example, in Deut. 25.9 it is the widow who

¹⁹⁴This ceremony, as practiced in later Judaism, is described in detail in Mishnah Yebamot 12.1-6.

¹⁹⁵Paul A. Kruger. "The Removal of the Sandal in Deuteronomy 25.9: 'A Rite of Passage'" *Vetus Testamentum* 46, 4 (October 1996): 534.

¹⁹⁶As presented by Kruger, "The Removal of the Sandal in Deuteronomy 25.9: 'A Rite of Passage'," 535.

¹⁹⁷A. Viberg. *Symbols of Law* (Stockholm, Sweden: no pub., 1992): 165.

removes the man's sandal, and not the male owner, as is the case in Ruth 4.7.¹⁹⁸ This change in actor seems to imply that the removal of the sandal in Deut. 25.9 should be viewed from the widow's (female) perspective and not from that of the male (the brother-in-law), as is most frequently done.¹⁹⁹ While the removal of the sandal in Ruth 4.7 points symbolically to the renunciation of the right of ownership, it does not mean that this gesture had the same significance under different circumstances, such as the context of Deut. 25.9. The same act is described in these two passages, but from two distinct perspectives, and it may not be assumed they mean the same thing because they may not, therefore, be related. Furthermore, and more importantly, the gesture in Deut. 25.9 could not have denoted the transfer of ownership, as is often claimed, for by the time the sandal is removed the brother-in-law has already renounced his right of ownership.²⁰⁰

Another group of scholars prefers to explain the event as an act of humiliation.²⁰¹ They argue that both gestures, the removal of the sandal and the spitting, have the same symbolic meaning: contempt or derision. This explanation is occasioned by the close connection between these two actions in this passage: first "the removal of the sandal" and then "the spitting in the face." The result has been the interpretation of the former in terms of the latter. While "spitting" is clearly an act

¹⁹⁸From the text in Ruth 4.7 it is not grammatically clear who is the remover of the sandal: the kinsman or Boaz?

¹⁹⁹Kruger, "The Removal of the Sandal in Deuteronomy 25.9: 'A Rite of Passage'," 535.

²⁰⁰Kruger, "The Removal of the Sandal in Deuteronomy 25.9: 'A Rite of Passage'," 535.

²⁰¹De Vaux, 22; H.A. Hoffner. "Some Contributions of Hittitology to Old Testament Study." *Tyndale Bulletin* 20 (1969): 42-45; Brichto, 19-20 opts for both significations: surrender of claim and contempt.

of contempt,²⁰² the "removal of the sandal" seems to be of a different nature. Most importantly, it appears that the man submits voluntarily to both of these actions. In a culture which puts honor above all else,²⁰³ the man's free participation in front of others must be viewed differently.

Carmichael has put forward another interpretation. He holds that the sandal represents the wife in a symbolic manner. According to this view the sandal represents the female genitals and the foot the male sexual organ, while the spitting symbolizes the semen that the brother-in-law has refused her.²⁰⁴ The question is whether anyone in the original audience would have understood such intricate symbolism. As Phillips rightfully claims, "nowhere in the Old Testament must sandals be understood as an euphemism for feminine genitals."²⁰⁵

Leggett, for his part, introduces an important new perspective on the subject. He approaches the significance of the gesture from the widow's point of view and argues that "the intention of the ceremony is primarily to protect the widow, not the unwilling brother."²⁰⁶ He further adds that such a procedure further entails that,

²⁰² See Num. 12.14; Is. 1.6; Job 30.10.

²⁰³ John J. Pilch and Bruce J. Malina. *Biblical Social Values and Their Meaning* (Peabody, MA: Hendrickson Publishers, 1993): 95-104.

²⁰⁴ Calum M. Carmichael. "A Ceremonial Crux: Removing a Man's Sandal as a Female Gesture of Contempt" *Journal of Biblical Literature* 96 (1977): 321-324.

²⁰⁵ Anthony Phillips. "The Book of Ruth--Deception and Shame." *Journal of Jewish Studies* 37 (1986): 13.

²⁰⁶ D.A. Leggett. *The Levirate and Goel Institutions in the Old Testament* (Cherry Hill, 1974): 55ff. as presented by Kruger, "The Removal of the Sandal in Deuteronomy 25.9: 'A Rite of Passage'," 536.

"if the widow waited a reasonable period without any sign that the brother-in-law was disposed to perform his duty toward her, she might, as a final measure, seek to be free from his authority and to either return to her own father or make her own way. This ceremony would then constitute a kind of release similar to the bill of divorcement."²⁰⁷

Contextually, this interpretation appears to be the most plausible as it takes into consideration the fact that the actions described in Deut. 25.5-10 take place after the brother-in-law has had the opportunity to consider his levirate obligations (v. 7), after he has been called by the elders so that he may have the opportunity to be convinced by them (v. 8a) and, especially, because he is set in his decision ("And [if] he persists", v. 8b).

Various juridical principles are involved here. The first one is that the widow automatically becomes the lawful wife of the brother-in-law immediately after the deceased brother's death.²⁰⁸ However, if this social obligation cannot be maintained, for whatever reason, then in terms of the rite-of-passage principle it has to be ceremonially dissolved: the married wife has to become a free woman again.²⁰⁹ In Deut. 25, this happens in two successive steps. First, the brother-in-law publicly announces his decision to abstain from performing his duty as a levir by issuing a performative statement: "I do not like to take her" (v. 8). As a performative statement, it carries within itself a legal sanction. The brother-in-law is not merely stating something; he is

²⁰⁷ Leggett, 57, as presented by Kruger 536.

²⁰⁸ Leggett, 57; Neufeld, 48.

²⁰⁹ Kruger, "The Removal of the Sandal in Deuteronomy 25.9: 'A Rite of Passage'," 537.

legally *doing* something, that is, renouncing his obligation to act as redeemer. Second, the woman performs the symbolic gesture of "the removing of the sandal" (v. 9). This act, which succeeds the utterance of the brother-in-law, could, therefore, not have been "to accomplish the decision of the brother-in-law to abstain from performing his duty as a levir,"²¹⁰ since that had already been accomplished by the performative utterance. There is no need, therefore, for the woman to repeat his decision, as is usually argued, by symbolically removing his sandal. The only thing left for her to do is to take his decision to its logical conclusion and to free herself from the obligations of her present social position, thus enabling her to be incorporated into a new social status as a free woman. This "rite of passage" must, however, be ceremonially solemnized. By removing the sandal, symbol of the husband's authority, she marks the transition from her "old" identity into a new social position, that of a free woman who can marry again.²¹¹

In addition, the levirate marriage has special relevance in cases where the deceased was head of the clan. By marrying the widow, the younger brother would then inherit the responsibilities of clan head, including stewardship of the clan lands.²¹² Therefore, when the widow removes the younger brother's sandal and spits in his face, in front of the town's elders, the symbolism is that he is unworthy to be family protector and steward. This idea seems to be strengthened by the added detail that he does not hand over his sandal voluntarily, but has it

²¹⁰Viberg, 157.

²¹¹Kruger, "The Removal of the Sandal in Deuteronomy 25.9: 'A Rite of Passage'," 538.

²¹²Cairns, 217.

removed by the one who bears the brunt of his unfitness, namely, the widow of the deceased head.²¹³

Also, as pointed out by Cairns, the public shaming implicit in the act of removing the sandal is reinforced by the person's being spat upon. He states that "in ancient belief, spittle and other body fluids contained a person's life potential, and were therefore powerful vehicles for imparting blessing or curse."²¹⁴ If this concept is correct, associated with the symbolic, and public, declaration of the man's unfitness to care for the family patrimony, albeit only temporarily, the act of spitting in his face would publicly declare his unfitness as a man.

Most interestingly, while the man could be pressured into fulfilling his duty as brother-in-law,²¹⁵ nothing appears to be decreed against a woman who would not comply with the duty enjoined by the levirate law. Oehler surmises that "childlessness was such a disgrace to a woman, that it might be presumed that she would not refuse without sufficient reason."²¹⁶ What these reasons might be are not specified, though.

²¹³Cairns, 217.

²¹⁴Cairns, 217.

²¹⁵Deut. 25.8a reads: "Then the elders of his city shall summon him and speak to him" (my emphasis).

²¹⁶Oehler, 235.

XI. The Levirate

The inheritance issue facing the daughters of Zelophehad²¹⁷ was explicit. In Ancient Israel inheritance rights existed only for male heirs. Therefore, the potential existed for the ancestral property to become alienated if no natural son existed.²¹⁸ Alongside this particular law of inheritance, stood the law of the levirate which also concerned itself with the subject of inheritance. However, as Fishbane rightly points out, two very distinct issues must be separated: inheritance based on the agnatic principle of blood kinship and the concept of inalienable property.²¹⁹ While in some legal systems these two issues are clearly distinct, they converge implicitly in Num. 27.1-11 and explicitly in Num. 36. In fact, we find that the issue of alienable paternal property is at stake in 1 Kg. 21.3,²²⁰ while the institution of the levirate attempts to solve the converging issues of property and blood relation when only sons are considered heirs. Thus, the inheritance of daughters and the levirate law stood side by side from very ancient times.²²¹

Simply stated, the levirate was the practice whereby the marriage of a man who died childless was continued by his brother. The firstborn son of this union was legally regarded as the dead man's son, especially with respect to his right of inheritance.²²²

²¹⁷Num. 27.8-11.

²¹⁸Fishbane, 98.

²¹⁹Fishbane, 98, n. 31.

²²⁰See also Jer. 32.6-15.

²²¹Burrows, "The Ancient Oriental Background of Hebrew Levirate Marriage," 2.

²²²Boecker, 120.

The primary requirement of the law of the levirate was that the childless widow "shall not be *married* outside the family to a strange man."²²³ Once again, this requirement seems to echo the proviso made in the case of the daughters of Zelophehad.²²⁴ Having inherited their father's estate when he died without leaving sons, the daughters were forbidden to marry outside their father's tribe. In their particular case the restriction was imposed for the express purpose of preventing the property from passing out of the tribe's possession. In fact, the judgment in this case became a law that an heiress must marry within her father's tribe.²²⁵ Apparently, a similar purpose may be included in the levirate law, although in this case the sphere of interest is the family rather than the tribe.²²⁶ Based on Num. 36 it has been proposed that it was possible for a childless widow to inherit her husband's property. However, if she married again, the inherited property would pass out of her husband's family. But if she re-married within his husband's family, the property would be preserved within that family. While this may not have been the original motivation of the levirate, it may have been one of the reasons why the institution of levirate marriage continued to be practiced.²²⁷

²²³Deut. 25.5c.

²²⁴Num. 36.

²²⁵Num. 36.8 = "And every daughter who comes into possession of an inheritance of any tribe of the sons of Israel shall be wife to one of the family of the tribe of her father, so that the sons of Israel each may possess the inheritance of his fathers."

²²⁶D.R.G. Beattie. "The Book of Ruth as Evidence for Israelite Legal Practice." *Vetus Testamentum* 24, 3 (July 1974) 265.

²²⁷Beattie, "The Book of Ruth as Evidence for Israelite Legal Practice," 265.

Natural processes being what they are, at times the physical line could be continued only through the daughters. In such cases any property had to be maintained within the line by what amounts to a legal fiction. A good example of this is found in 1 Chron. 2.34-36. There we read that Sheshan only had daughters, so he gave one of his daughters to his Egyptian slave, Jarha. Through this marriage Sheshan, himself, obtained a son and heir, Attai.²²⁸ Earlier on, we find the same kind of situation in Num. 27.1-11. Zelophehad had five daughters, but no sons. These daughters were the ones asking: "Why should the name of our father be withdrawn from among his family because he had no son? Give us a possession among our father's brothers" (v. 4). It seems quite clear that, here, when the daughters speak of their father's name, it is property and inheritance that is meant. It is also quite clear in this passage that in order for the name to be preserved, the man's inheritance had to be maintained within his family. It is important to note, for this becomes very significant in the discussion of the levirate obligation, that family is not exclusively considered to include the brothers of the man, but all those who belong to the same tribe.²²⁹ Furthermore, it is not clear whether the levirate applied when the dead brother was only inchoately married. It did so presumably, since this position was equivalent to that of marriage in most respects, and it was just as desirable to keep the man's name alive whether he had or had not completely married his bride.²³⁰

²²⁸ See Pedersen, vols. I-II, 75.

²²⁹ Thompson, "Some Legal Problems in the Book of Ruth," 88.

²³⁰ Driver, *The Assyrian Laws*, 241, n. 3.

Because of the law for heiresses, the words, "if he has no son" (Deut. 25.5b), have been understood by Jewish and many Christian expositors to mean childlessness in general, because if there was a daughter she could be the heiress and, therefore, no levirate marriage could take place. The broad interpretation given the biblical phrase וְיָבִין אִין-לֵוִי (Deut. 25.5) is very revelatory of the Rabbinic attitude. Quite at variance with the general practice in Rabbinic exegesis, לֵוִי is construed broadly to mean "child," and not merely "son." Thus the phrase is understood to mean, "if he left no offspring." Consequently, if the man had an illegitimate son or daughter, or a grandchild, the brother-in-law was forbidden to marry the widow.²³¹ Similarly, although much older, the Septuagint renders לֵוִי by σπέρμα, "seed," encompassing thus both male and female offspring and limiting the rite of the levirate to a totally childless widow.²³² This seems to also be understood later on in Matt. 22.25 (καὶ μὴ ἔχωσ σπέρμα = "having no offspring") and Luke 20.28 (καὶ οὗτος ἄτεκνος ἦ = "and he is childless"). Another view is that the law of the levirate took precedence over the law of heiresses, so that a daughter did not inherit if there was still a marriageable widow.²³³ However, we may argue that the original law of Deut. 25.5-10 specifies "one of them [the brothers] dies and has no son." It is the man who has no son, not the woman, for the man could have had children by another wife or concubine. Could we assume that the law takes for granted that the woman can have children? That she may even have some already? Or, even, that she may have had daughter(s)? What is most

²³¹Baruch Halevi Epstein. *Torah Teminah* (New York, NY: KTAV Publishing House, Inc., 1922): 386, n. 52.

²³²Gordis, 251.

²³³Oehler, 235.

intriguing is that the issue of barrenness is not addressed at all in this law. It does not even come into consideration. It is taken for granted, so to speak, that the woman is capable of bearing children. Had this not been so, the whole procedure would have been futile, as well as a ground for divorce.²³⁴

Central to the institution of the levirate was the raising up of the name of the deceased. This is made evident by the Hebrew term used: יבמת. Thompson, in his analysis of the word, refers to the text of Ras Shamra, where a standard epithet of the goddess Anat, the goddess of fertility, is *y-b-m-t limm*. Further, he makes reference to the possible connection between the Hebrew word יבמת and the Akkadian word *bamatu*, "loins," concluding that the root of that word denotes procreation and that the word *y-b-m-t* specifically means "progenitress." The masculine form of the word, יבמת, carries the meaning "progenitor." These words, Thompson argues, "came to mean 'sister-in-law' and 'brother-in-law' because these were the parties usually involved in the custom of *yibbum*, 'the levirate'."²³⁵ Thompson further adds:

It is (most significantly) not *yibbum* which is derived from *yabam*, but the other way around! The word for brother-in-law properly comes from *yibbum*. In English the derivation is in inverse order. The word "levirate" derives its meaning from the Latin *levir*, "brother-in-law," and means, accordingly, "marriage of the brother-in-law." Possibly, to avoid this confusion (which seems

²³⁴ See William Raccach. "Against But For: Jesus' View of Remarriage in Light of the Biblical, Extra-Biblical and Rabbinic Literature on Divorce and Remarriage." MA Thesis. (Vanguard University/Southern California College, Costa Mesa, CA: Theological Research Exchange Network, 1987): 29-40.

²³⁵ Thompson, "Some Legal Problems in the Book of Ruth," 84-85. See also Burrows, "The Ancient Oriental Background of Hebrew Levirate Marriage," 6-7; and Neufeld, *Ancient Hebrew Marriage Laws*, 23.

inevitably to equate the levirate with brother-in-law -- and this is not the meaning of the Hebrew), we ought not to translate *yibbum* as "levirate" but as "progenitor marriage," or the like. It is progeny, rather than any previous relationship between the couple that is significant in this custom.²³⁶

Thompson's view is rather interesting and seems to find support in the various biblical texts which make reference to the application of the custom of the levirate. In both Gen. 38 and Ruth, this obligation could and did extend to relatives other than the brother-in-law of the widow.²³⁷ However, Beattie argues that the levirate law clearly stated that the יָבִיבִים was to take his sister-in-law "as a wife" (Deut. 25.5) and that the case of Judah and Tamar (Gen. 38) cannot be considered a marriage in the strict sense of the term since verse 26 states that Judah "knew her no more." He further points out that "Judah's vindication of Tamar's action is cast in relative, and not absolute, terms -- 'She is more in the right than I', he said (v. 26) -- and there is no hint in the story that her actions were sanctioned by law or custom."²³⁸ He thus concludes that Gen. 38 cannot be used as evidence for the view that the levirate obligation extended to relations other than the dead husband's brother. Yet, there is much in the extra-biblical parallels which lead us to understand that the levirate was not limited to brothers.²³⁹ While these laws do mention the brothers as being the

²³⁶Thompson, "Some Legal Problems in the Book of Ruth," 85.

²³⁷See E. Neufeld, *Ancient Hebrew Marriage Laws*, 36; see also H.H. Rowley. "The Marriage of Ruth." *Harvard Theological Review* 40 (1947): 80.

²³⁸Beattie, "The Book of Ruth as Evidence for Israelite Legal Practice," 261.

²³⁹MAL §33 = "[If] a woman is still dwelling in her father's house (and) her husband is dead and [she] has sons, [she shall dwell in a] house [belonging to them where she chooses. [If] she has no [son, her father-in-law shall give her] to whichever [of his sons] he likes or, if he pleases, he shall give her as a spouse to her father-in-law. If her husband and her father-in-law are [indeed] dead and she has no son, she becomes (in law) a widow; she shall go whither she pleases."

first in line as the normal partners of the levirate union, the obligation may fall just as much on the father of the deceased son. Moreover, beyond this linear relationship of brother and father, in the Book of Ruth, through the default of a brother-in-law or of a father-in-law, other relatives, in order of nearness of kinship to her, had the duty of marrying the widow.²⁴⁰

While some may find it attractive to explain the institution of the levirate in terms of the desire to guarantee the dead man the cultus that is his due,²⁴¹ it is much better explained in terms of the ancient belief in *mana* than that of ancestor-worship.²⁴² Besides the retention of the father's inheritance, the memory, or name, of the one who has died childless was not to be rooted out of Israel. This concern is supported by Absalom's action in setting up a memorial to himself during his

HL §193 = "If a man has a wife and the man dies, his brother shall take his wife, then his father shall take her. If also his father dies, his brother shall take his wife [and also] the son of his brother shall [take her]. (There shall be) no punishment."

²⁴⁰R.H. McGrath. "Levirate Marriage (In The Bible)." *New Catholic Encyclopedia*, Vol. 8. (Washington, DC.: The Catholic University of America, 1967): 683.

²⁴¹Blenkinsopp, "The Family in First Temple Israel," 63. This type of belief is prominent among those people with whom ancestor-worship is indigenous, namely Indians, Persians, Afghans and others.

²⁴²Walther Eichrodt. *Theology of the Old Testament*. 2 vols. (Philadelphia, PA: The Westminster Press, 1967): 219. Brichto, 48-49, writes:

We believe that the evidence deduced from earliest Israelite sources through texts as late as the exilic prophets testifies overwhelmingly to a belief on the part of biblical Israel in an afterlife, an afterlife in which the dead, though apparently deprived of material substance, retain such personality characteristics as form, memory, consciousness and even knowledge of what happens to their descendants in the land of the living. They remain very much concerned about the fortunes of their descendants, for they are dependent on them, on their continued existence on the family land, on their performance of memorial rites, for a felicitous condition in the after life. Such a belief is not to be confused with "immortality only in their posterity" . . .; nor with a vague hope that the dead continue as individuals or names in the memory of the later generations. Nor is it to carry in its train such conceptual baggage as Paradise, Elysian Fields, Resurrection, etc. This belief on the part of biblical Israel is not repudiated, nor are the basic practices attendant to it proscribed by the authoritative spokesmen of normative biblical religion.

lifetime because he wished to prevent his name from falling into oblivion as a result of his childlessness.²⁴³ There can be no question of ancestor-worship here, for it is impossible to imagine how the memorial Absalom built could be a substitute for the cult of the dead. The most probable explanation for the perpetuation of the name was the primitive belief "that a man survives in his progeny, and that his name forms a kind of *alter ego* which in relative independence of the man who bears it, and yet not without influence on his fortunes, leads an existence of its own."²⁴⁴ Therefore, this belief should more probably be included under the general heading of belief in *mana*, because the conception is dominated less by the survival of the soul than by the retention of vital power within the family.²⁴⁵ At the same time, the association of a firm right of inheritance through the institution of marrying the brother-in-law gave the custom permanent stability.²⁴⁶

According to the custom of the levirate, which was by no means confined to Ancient Israel, the widow of a husband who died childless would cohabit with or marry the brother of the deceased with a view to raising up an heir who would carry on the name of the deceased. In other words, the first son born of this proxy marriage would be the legal heir and legatee of the deceased.²⁴⁷ This custom's purposes were varied. One

²⁴³ 2 Sam. 18.18.

²⁴⁴ Eichrodt, 220.

²⁴⁵ Eichrodt, 220.

²⁴⁶ Eichrodt, 220.

²⁴⁷ Millar Burrows. "Levirate Marriage in Israel" *Journal of Biblical Literature* 59 (1940): 23-33; Thompson, "Some Legal Problems in the Book of Ruth," 79-99. R.G. Abrahams, "Some Aspects of Levirate" in *The Character of Kinship*, Jack Goody, ed. (Cambridge, England: Cambridge University Press, 1973): 163-174; Eryl W. Davies, "Inheritance Rights and the Hebrew Levirate Marriage" Part 1, *Vetus Testamentum* 31, 2 (April 1981): 138-144. Eryl W. Davies, "Inheritance Rights and the Hebrew Levirate Marriage" Part 2, *Vetus Testamentum* 31, 3 (July 1981): 257-268. Raymond Westbrook.

was to prevent the widow from marrying outside the household or clan; another was to ensure legal descendants of the deceased, as well as his decent burial and peaceful postmortem existence;²⁴⁸ yet another was to provide pre-mortem security for his widow.²⁴⁹ Furthermore, since Israelite law did not provide for the widow to inherit the property of her husband,²⁵⁰ the danger of alienating the ancestral holding does not seem to have been an issue as far as the stipulation was concerned.²⁵¹

It is evident that this procedure would work only if certain conditions were fulfilled. The first was that a brother or next of kin was available. The second was that this person had no economic or psychological objections to performing this "redemptive" task. If that person was reluctant to fulfill what appears to be an obligation, the widow could enlist the local elders. And, if they failed to talk him into it, he was subjected to a ritual public humiliation.²⁵² However, by refusing to perform the duty of the levir, a man might hope to inherit his dead brother's property, since he would be next in line.²⁵³ Both the stories of Tamar,²⁵⁴ and Ruth²⁵⁵ show to what lengths a young widow might

"Jubilee Laws" in *Property and the Family in Biblical Law* (Sheffield, England: JSOT Press, 1991): 69-89.

²⁴⁸ See below.

²⁴⁹ Blenkinsopp, "The Family in First Temple Israel," 63.

²⁵⁰ Contrast Ruth 4.3, 9; 2 Kg. 8.1-6; and Judith 8.7. See Perdue, "The Israelite and Early Jewish Family: Summary and Conclusions," 188.

²⁵¹ Blenkinsopp, "The Family in First Temple Israel," 63.

²⁵² Lyn Bechtel. "Shame as a Sanction of Social Control in Biblical Israel: Judicial, Political and Social Shaming." *Journal for the Study of the Old Testament* 49 (1991): 47-76.

²⁵³ Num. 27.9.

²⁵⁴ Gen. 38.

²⁵⁵ Ruth 4.

be driven to secure compliance with the levirate custom, thus preserving her husband's line and securing her own future at the same time.²⁵⁶

XII. Evaluation

It seems that the purpose of the law of the levirate found in Deut. 25.5-10 was to prevent the loss of family property through the widow's marrying outside the family or clan, or even by the refusal of the וַיִּזְנֶה to fulfill his obligation.

Refusal to fulfill this obligation was possible, although it carried with it an humiliating public ceremony which would certainly mark a man in his community. This refusal could be for any reason, one of which would be the desire to appropriate the dead brother's property. This was theft, and, as such, it was not solely an attack on property, but indirectly on the fellow-Israelite's person and on the stability and viability of one's family. Since a man's land and property were the tangible symbols of his personal share in the inheritance of Israel, as well as the vital means of economic support for his family, and therefore, too, essential for his household's share in the membership of the religious community, theft meant at least the diminution of a person's practical enjoyment of the blessings of belonging to the people to whom God had given the land, and at worst, if it involved his whole substance, the loss of his very standing within the community and dire consequences for his family.

²⁵⁶Blenkinsopp, "The Family in First Temple Israel," 64.

This law of the levirate applied when brothers or close kin lived together within the same town or village. The levirate would insure progeny to the deceased and pass his inheritance to the firstborn, whether male or female, of the new union. Two fundamental principles underlay this law: the support and protection of the wife of the dead man, and the maintenance of the family property or inheritance within the immediate family. Both these goals could normally best be achieved by the husband's near or extent family giving the woman a son, who would be responsible for his mother's support and who would also become the future heir.²⁵⁷

It seems evident, therefore, that the primary purpose of the law of the levirate was tied very closely to economic circumstances, one of which, and most probably the most important one, being that of the widow of the deceased. While the name of her former husband would be preserved, and while his property would remain within the family, she was the direct beneficiary of this "imposed" union. In the very immediate future she would be taken care of by her new husband, while in the more distant one the son (child?) produced in that new union would be expected to look after her in her old age. Uncomfortable as we may feel about this prescribed arrangement, we need to remind ourselves that Ancient Israel's welfare issues needed to be addressed within a cultural context which made sense to the participants

²⁵⁷Thompson, "Some Legal Problems in the Book of Ruth," 96.

CONCLUSION

Our investigation of the care of widows and of the laws of the levirate took us on an extensive voyage of discovery. This journey unveiled many of the customs of both the Ancient Near East and Ancient Israel. Although thought of as uniform, the world in which the people interacted and lived their daily lives was not homogenous. According to Wenham, three different worlds can be seen in the biblical text. The first is that of the writers themselves who, although they may have their own ethical outlook, rarely make their views explicit. Second is the world of the law which attempts to regulate problems that may arise in society. Third is the ethical world of the actors themselves who may or may not live according to ethical standards,¹ which may or may not be congruent with those enshrined in the law or held by the biblical writers.² Recent writers, however, point out that the narrators of the biblical texts at least assumed the standards enshrined in the laws.³

Less frequently noted is the fact that the ethical stance of the biblical writers was not always the same as that demanded by the law. In most instances, if not always, the law is seen as setting a minimum standard of behavior, which, if transgressed, attracted sanction(s). While the law regulated various institutions, n looking at the

¹It should be noted that laws imply an ethical stance, which may be elucidated by analysis and synthesis.

²Gordon J. Wenham. "The Gap Between Law and Ethics in the Bible." *Journal of Jewish Studies* 48,1 (Spring 1997): 17.

³See R. Alter. *The Art of Biblical Narrative* (New York, NY: Basic Books, 1981); Gerhard von Rad. *Genesis: A Commentary* (London, England: SCM Press, 1972): 280; M. Sternberg. *The Poetics of Biblical Narrative* (Bloomington, IN: Bloomington University Press, 1985): 350. Bill T. Arnold, and Bryan E. Beyer. *Encountering the Old Testament* (Grand Rapids, Mi: Baker Books, 1999): 22-26.

institution of slavery or bigamy, one cannot but ask if the Bible endorses these institutions and regards them as ethically desirable? By the same token, one could also wonder if the law condemning adulterers with death applied only where the woman involved was married. Does that mean that affairs by husbands with unattached girls or prostitutes were permissible?⁴

In most societies what the law enforces is not the same as what upright members of that society feel is socially desirable, let alone ideal. There seems to be a strong link between the legislators' ideals and what can be enforced in practice. In most instances a law is designed to enforce a minimum standard of behavior, whereby those who break it or fail to live up to its standard are punished. Thus, for Falk, ". . . ethics is much more than keeping the law. Or, to put it in biblical terms, righteousness involves more than living by the Decalogue and the other laws in the Pentateuch."⁵ Often the requirements of the law have been equated with the ideals of the biblical writers, yet, a gap exists between the requirements of the law and reality.⁶ In some instances that gap is quite evident, as in the case of idolatry and homicide; in others, however, as in the case of sexual morality, the situation is more complicated.⁷ Like the surrounding nations and many

⁴Wenham, "The Gap Between . . ." 18. He adds: "If false testimony in court was subject to the *lex talionis* (Dt. 19.16-21), does that mean that in other circumstances flexibility with truth was allowed: that slander, boasting, exaggeration, gossip could be indulged in with an easy conscience?"

⁵Z.W. Falk. "Law and Ethics in the Hebrew Bible" in *Justice and Righteousness*, H.H. Reventlow and Y. Hoffmann, eds. (Sheffield, England: Sheffield Academic Press, 1992): 82-90.

⁶Wenham, "The Gap Between . . ." 18.

⁷Thus, Wenham, "The Gap Between . . .", 22, writes:

Although Abraham resorted to surrogate marriage to have a child through Hagar, an accepted practice in the ancient Near East, that does not mean the narrator approved of it. On the contrary the subtle echoes of Genesis 3 in Genesis 16

cultures since, Ancient Israel operated on the double standard as regards legal and social levels. However, just looking at the laws gives a misleading view of what actually went on in Ancient Israel, especially as regards family laws.⁸

Taking Genesis 1.27 as a starting point,⁹ it is generally accepted on the basis of extra- and intra-biblical parallels that mankind is viewed as God's representative on earth. Man, in the sense of humanity, is God's vice-regent, having been appointed to rule the earth in a godlike way, and having been given dominion over other creatures.¹⁰ Thus, within the framework of the Creation narrative, God, who created all, placed the world of subhuman species under the domination of man; but man cannot be thus dominated by man -- only by God. Laws, therefore, are mutual understandings among human beings, culturally determined and relative -- as well as changeable.¹¹ Hence, both kings and commoners must exhibit divine virtues in their behavior, pursuing justice and care for the poor.¹² Because of God's fidelity, love, generosity and forgiveness extended to mankind, men are to treat their fellow human beings in similar fashion. These are the qualities that God looks for

suggest that Abraham and Sarah were making a mistake comparable to that of Adam and Eve in the Garden of Eden.⁷ This illustrates the gap between ancient practice and the writer's outlook. And there are many passages where it is much more clear that the writers do not approve of the sexual shenanigans of the actors in the story.

⁸ See, for example, Gen. 34; Ex. 22.15-16; Deut. 22.29; see also my "Against But For: Jesus' View of Remarriage in Light of the Biblical, Extra-Biblical and Rabbinic Literature on Divorce and Remarriage." MA Thesis. Vanguard University/Southern California College, Costa Mesa, CA: Theological Research Exchange Network, 1987.

⁹ It reads: "God created man in his own image."

¹⁰ See, for example, Gen. 1.28; Ps. 8.4-8.

¹¹ George E. Mendenhall. *The Tenth Generation* (Baltimore, MD: The John Hopkins University Press, 1973): 195.

¹² Dt. 10.17-19; 14.28-29; Job 29.12-17; Ps. 72.

among his people for, as Wenham writes, "they are to reflect, even positively imitate, his character."¹³

The self-evident anthropological assumption among the ancient Israelites was that humans' sexual distinctiveness was meant to see males and females complement one another. This sexual encounter-structure created a sphere of existence in its own right, regardless of what else the meaning and function of human life might be.¹⁴ This encounter was basically made possible and controlled by the societal conventions most evident in the engagement and the consummation of the marriage.¹⁵ Within this controlled environment, wives had very specific rights, and obligations. As long as they belonged --indeed--to their husband's property, they had rights which their husbands had to observe. Thus, the husband was obligated to feed his wife¹⁶ and, if he died, his brother had to take her over, take care of her and, above all, give their first child the name of the deceased brother in order that the dead brother's name and family be carried on.¹⁷

It is within this framework that the Old Testament is to be understood. Therein we find that all the Old Testament references were concerned with the protection of the rights of the wives or women against the potential arbitrariness of their owners or of men.¹⁸ The

¹³ Wenham, "The Gap Between . . .", 26.

¹⁴ Rolf Knierim. "The Role of the Sexes in the Old Testament" *Lexington Theological Quarterly* 10, 4 [no date]: 1.

¹⁵ Hans Walter Wolff. *Anthropology of the Old Testament*. Margaret Kohl, transl. (Philadelphia, PA: Fortress Press, 1974): 166. See Knierim, "The Role of the Sexes in the Old Testament," 2.

¹⁶ See Is. 4.1.

¹⁷ Knierim, "The Role of the Sexes in the Old Testament," 3.

¹⁸ Knierim, "The Role of the Sexes in the Old Testament," 3.

reason why such explicit attention is given to the rights of women is that in this kind of societal convention women were treated arbitrarily, oppressively and without protection.¹⁹ Thus, according to the Old Testament, the goal, the purpose, and the meaning of the encounter of males and females do not lie in the obedience against the societal conventions, as much as they are the basis on which, and the framework within which the encounter is supposed to take place.

Israelite law served the perceived moral interests of the family or, more specifically, of the *paterfamilias*. The combination of the philosophical categories of social ethics and morality made rudimentary family law more injunctive. It also laid the groundwork for what appears to represent a later development, namely the linking of family law and divine law, wherein all lawbreakers--regardless of their social affiliation--stood guilty of violating universal moral imperatives and found themselves in a situation which required restitution to lineage members and God alike.²⁰ This "natural social instinct," as Eichrodt calls man's reaction to these universal moral imperatives, did stimulate men to moral action.²¹ Anything that furthered the prosperity of the family, or its larger context, the clan, anything that was of service to

¹⁹ Knierim, "The Role of the Sexes in the Old Testament," 4; he writes: "It is at this point, where the Old Testament people became alert, began to raise their voices--the voices of men--and to speak out restricting men and protecting women. And it is with utmost disgust and condemnation that they related abhorrent examples, not sparing the most prominent king in Israel's history, in which women were recklessly attacked or not properly protected."

²⁰ Ron E. Tappis. "The Law Behind the Decalogue: Understanding the Commandments as a Code of Kinship." Paper presented at the Society of Biblical Literature annual meetings - Biblical Law Group, November 1996: 21.

²¹ Walther Eichrodt. *Theology of the Old Testament*. vol. 2 (Philadelphia, PA: The Westminster Press, 1967): 366.

the tribe and the tribal league, was felt as an impulse to action, to which the egoistic interests of the individual must take second place.²²

It is within this setting that our study took place. Whether in the documents of the Ancient Near East or the biblical text, we discovered a complex world in which women played a crucial role. In fact, both in story and poetry many women of the Old Testament made a significant mark on society.²³ In spite of a legal system and social customs which discriminated severely against them,²⁴ women attained a certain fulfillment as women. Their primary role was to supply their husband with children, especially sons. When a true widow, that is a husbandless woman who had no son, was part of that society her fate could be pitiable as she was bereft of male protection. Her future was indeed bleak, as she had no one to take care of her in her old age. The heartfelt plea of the prophets commending widows and orphans to people's charity, and even God's obvious bias in their favor, though most welcome, simply prove how neglected and ignored they were.²⁵

²² Eichrodt, vol. 2, 366.

²³ J.C.L. Gibson. *Language and Imagery in the Old Testament* (Peabody, MA: Hendrickson Publishers, 1998): 148-149; he writes:

They [the women] can achieve high positions and show remarkable strength of character like Rebekah who schemed for her boy (Gen. 27), or Tamar who upstaged her father-in-law (Gen. 38), or Deborah who summoned Israel to war (Jg. 4.5-7), or Naomi who extricated her daughter-in-law from the reproach of widowhood (Ruth), or Queen Esther who rescued her people from one of the earliest pogroms. Proverbs chapter 31 tells of the resourceful housewife, who looked after her family and was praised by her husband at the gate. Rachel was genuinely loved by Jacob; and the Song of Solomon celebrates in sensuous imagery the mutual love of a young man and woman engaged to be married.

²⁴ Even in the Ten Commandments a wife was included among her husband's possessions along with his slaves or his ox and ass (Ex. 20.17), and she had to call him lord or master as though she were a slave or a king's subject. Neither wife nor daughter could inherit property except where there was no male heir. However, a man could not sell his wife, though he could his daughter. He could divorce his wife, but not she him.

²⁵ A good illustration of this neglect is found in the story of the widow of Zarephath who answered Elijah's request for some sustenance (1 Kings 17.12):

We saw that the laws on gleaning, together with all the laws dealing with the widow and orphan, were not requiring charity, but established a support system which would ensure that vulnerable, landless members of society would not be poor.²⁶ Poor was the term referring to all those who were economically at risk. Thus, the law collections were not concerned with creating a society in which poverty did not exist. Rather, they established parameters within which the poor could survive.²⁷ They also provide the background upon which the law of the levirate is to be understood.

The tendency toward endogamy²⁸ helped to insure the retention of the ancestral estate within the clan. This explains the dispensation to marry the widow of one's brother in cases where the deceased brother left no male heir. The heir produced by levirate marriage would carry on the name of the deceased which, as we have seen, means more than having his name; the carrying of the name included the repossession of one's patrimony.²⁹ However, it seems that the levirate marriage was more an exception than the rule, for Lev. 18.6-17 establishes quite clearly the

"As the Lord your God lives, I have nothing baked, only a handful of meal in a jar, and a little oil in a cruse; and now, I am gathering a couple of sticks, that I may go in and prepare it for myself and my son, that we may eat it and die."

²⁶ Christiana Van Houten. *The Alien in Israelite Law*. Journal for the Study of the Old Testament, Supplement Series 107 (Sheffield, England: Sheffield Academic Press, 1991):123.

²⁷ Van Houten, 124.

²⁸ Custom by which people married within one's own group.

²⁹ Baruch A. Levine. *The JPS Commentary - Leviticus* (New York, NY: The Jewish Publication Society, 1989): 254. The episode of Zelophehad's daughters, in Num. 36, also indicates the importance of keeping an inheritance within the same clan. Because there were no sons, these daughters were granted the right to inherit their father's estate but were required to marry men of their father's clan. Since the estate would come into the possession of their husbands upon marriage, it was imperative that they not marry outside the clan.

prohibited degrees of consanguineous marriages. Further, levirate marriages never appear as compulsory. Certainly the humanitarian purpose of caring for the widow was there, but so was also "the economic necessity of maintaining the unity and moral functioning of a mutually dependent household group."³⁰ While in some societies, such as found in Mesopotamia, the levirate rite may have reflected the concept of the woman being part of the family property, so that she was inherited by the dead man's kinsman along with his estate, this was emphatically not the case in Israel. The active role played by the woman in the levirate in Deut. 25 mitigates against this view of the woman as a passive chattel being passed from hand to hand.³¹ Even the story of Ruth, and Naomi, who were not present during the procedures at the gate between Boaz and the unnamed kinsman, describes the active, albeit questionable, roles played by the two women.

We also found that the institution of the levirate, as presented in Deut. 25.5-10, addressed the economic situation of the true widow, similar to the situation in the Middle Assyrian Laws. In all instances where such relationships are described the parties involved, whether knowingly or not, are fulfilling the requirement to take care of widows who have no son. This, it seems, is the *raison d'être* of the law of the levirate. When a woman, who has no other means of support, finds herself in the throws of an hostile world, something ought to be done. Therefore, in the two instances where the institution of the levirate

³⁰ J. Barton Payne. *The Theology of the Older Testament* (Grand Rapids, MI: Zondervan Pub. House, 1962): 331.

³¹ Robert Gordis. "Love, Marriage, and Business in the Book of Ruth: A Chapter in Hebrew Customary Law" in *A Light unto My Path*. Old Testament Studies in Honor of Jacob M. Myers. Howard N. Bream, Ralph D. Heim and Carey A. Moore, eds. (Philadelphia, PA: Temple University Press, 1974): 248.

are presented to us,³² we discover that women had to take the initiative in order to have their right vindicated. A third instance is alluded to in the New Testament,³³ although no legal details are really supplied and we are left to simply acknowledge that the Jewish people of the day knew and practiced this custom. This is reinforced by the Apostle Paul's injunctions in 1 Timothy 5.3-14, where he enjoins young widows to remarry and have children, and where older widows, who have been put on the widows' list, are to be taken care of by the community of believers.

Thus, although the levirate was something bordering on incest, it was the only reasonable way the ancient Israelites, and the Jews after them, could keep property within a man's family, even after his death, and take care of a widow in her old age. While this may make us uncomfortable and push our accepted limits on morality, the pragmatic answer(s) of the people of the Old Testament time need to be looked at from their perspective and not ours. In a world where the economic condition of a woman was determined by her relationship to a male, whether her husband, her son, or, by default, her brother-in-law, something had to be done when the two primary contributors to her wellbeing were no longer there, or not yet present. Therein lies the economical dimensions in the stipulation of the law of the levirate as articulated in Deuteronomy 25.5-10

³² Judah and Tamar in Gen. 38 and Ruth and Boaz in the book of Ruth.

³³ Matt. 22.23-33, Mk. 12.18-27 and Lk. 20.27-40.

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