

# **PRIMOGENITURE IN THE OLD TESTAMENT**

## **Towards a Theological-Ethical Understanding of Patriarchy in Ancient Israel**



**Dissertation presented for the Degree  
Doctor of Theology at the University of Stellenbosch**

**Promoter: Prof. HL Bosman**

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## **DECLARATION**

I, the undersigned, hereby declare that the work contained in this dissertation is my own original work and has not previously in its entirety or in part been submitted at any university for a degree.

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Signature

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Date

## ABSTRACT

As the title suggests, this research is a study of primogeniture in the Old Testament towards a theological-ethical understanding of patriarchy in ancient Israel. Using the Ancient Near East as a wider context of the Old Testament, the research first analysed the Ancient Near East texts relating to primogeniture, i.e., texts relating to inheritance and succession. In so doing the research reveals that primogeniture was a generally practiced custom of most of the Ancient Near East societies, serving as a cornerstone for their patriarchal culture. The research also demonstrates that there were exceptions to the rule. For example, the Elamites practiced matrilineal and matrilocal customs. Within the general practice of primogeniture among most of the Ancient Near East societies, firstborns were often displaced in favour of younger sons. In some cases, daughters and wives could also inherit and own properties, although succession to the throne by daughters was rare.

The central focus of the research is a socio-rhetorical criticism of the primogeniture text of Deuteronomy 21:15-17. Like in the Ancient Near East, this study also discovers that primogeniture was a generally practiced custom as well as a cornerstone of ancient Israel's patriarchy. However, exceptions to this rule in ancient Israel seemed to be even more notorious than in those of other ancient Near East societies. The custom was often not followed. Daughters could also inherit. Firstborns were displaced by their younger brothers for prime heirship of the family as well as succession to the throne. This violation of primogeniture custom was theologically and ethically qualified and politically and ideologically appropriated. The research thus concludes that these theological-ethical qualifications as well as political-ideological appropriation of the violation of primogeniture based on socio-economic and religious-political changes of society indicate that patriarchy according to the Old Testament is not a static divine blueprint for all societies of all generations. Rather, patriarchy in ancient Israel was a dynamic socio-historical and theological-ethical process which was subjected to change, modification, reinterpretation, and re-appropriation according to socio-economic and religious-political developments of a given society.

In the name of patriarchy, women had been denied their rights, robbed of their dignity and worth, and regarded as a second class image of God in many societies, then and now. Committed to correcting these wrongs, this research – arguing that patriarchy in the Old Testament is not so much a privilege as it is to a responsibility – challenges the contemporary hierarchical patriarchal ideologies, and contends for gender equality in all walks of life, remembering that we are all created equally in the image of God.

## OPSOMMING

Soos die titel aandui, dek hierdie studie eersgeborenhed in die Ou Testament om 'n teologies-etiese begrip van die patriargie in antieke Israel te bewerkstellig. Teen die Antieke Nabye Ooste (ANO) as wyer konteks van die Ou Testament, analiseer die navorsing ten eerste die ONO-tekste wat betrekking het op eersgeborenhed, met ander woorde tekste wat verwys na vererwing en opvolging. In die proses het die navorsing aan die lig gebring dat eersgeborenhed 'n wydverspreide praktyk in die meeste ANO-gemeenskappe was en as hoeksteen vir hul voortbestaan en patriargale stelsels gedien het. Die navorsing het ook aangetoon dat uitsonderings op hierdie reël voorgekom het. So het die Elamiete byvoorbeeld matriliniêre gebruike gehad, asook waar die man by die vrou se familie gaan woon het. In die algemene gebruik van eersgeborenhed onder meeste van die ANO-gemeenskappe, is eersgeborenes dikwels vervang ten gunste van jonger seuns. In sommige gevalle kon dogters en eggenotes ook erflatings ontvang en vaste eiendomme besit, alhoewel troonopvolging deur dogters baie selde voorgekom het.

Die sentrale fokus van die navorsing is 'n sosioretoriese kritiek op die eersgeborenhedstekes in Deuteronomium 21:15-17. Soos ten opsigte van die ANO, het die studie ook vasgestel dat eersgeborenhed 'n algemeen aanvaarde praktyk en ook hoeksteen van antieke Israel se patriargie gevorm het. Maar die uitsonderings op hierdie reël in antieke Israel was skynbaar selfs meer opspraakwekkend as in ander ANO-gemeenskappe. Die gebruik is dikwels nie nagevolg nie. Dogters kon ook vererf. Eersgeborenes is deur hul jonger broers vir die belangrikste erfporse van die familie vervang, asook vir troonopvolging. Hierdie verbreking van die eersgeborenhedsgebruik is teologies en eties gekwalifiseer en polities en ideologies toegepas. Die navorsing kom dus tot die gevolgtrekking dat hierdie teologies-etiese kwalifikasies, asook die polities-ideologiese toepassing van die verbreking van eersgeborenhed, gebaseer op sosio-ekonomiese en religieus-politieke veranderinge in die gemeenskap, aandui dat patriargie volgens die Ou testament nie 'n statiese, godgegewe bloudruk vir alle gemeenskappe van alle generasies daarstel nie. Patriargie in antieke Israel was eerder 'n dinamiese sosiohistoriese en teologies-etiese proses, wat onderworpe was aan verandering, aanpassing, herinterpretasie en hertoepassing ingevolge sosio-ekonomiese en religieus-politieke ontwikkelinge van 'n gegewe gemeenskap.

In die naam van patriargie is vroue in baie gemeenskappe, destyds en vandag nog, ontnem van hul regte, van hul waardigheid en van hul waarde gestroop en beskou as 'n tweede klas beeld van God. Hierdie navorsing is toegewy aan die regstel van hierdie onregte en is van mening dat patriargie in die Ou testament nie sodanig 'n voorreg was nie as 'n verantwoordelikheid en daag daarmee die hedendaagse hiërgiese patriargale ideologieë uit. Dit spreek hom uit ten gunste van geslagsgelykheid in alle gebiede van die lewe, met in ag neming dat ons almal gelyk geskape is in die beeld van God.

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## ABBREVIATIONS

<i>ABD</i>	<i>The Anchor Bible Dictionary</i> , ed. DN Freedman, Doubleday: New York (1996 [1992]).
<i>AD</i>	Anno Domini
<i>AfOB</i>	<i>Archiv für Orientforschung International Zeitschrift für die Wissenschaft vom Vorderen Orient-Beiheft</i> (1933-)
<i>ANE</i>	Ancient Near East
<i>ANET</i>	<i>Ancient Near Eastern Texts: Relating to the Old Testament</i> , ed. JB Prichard, Princeton: Princeton University Press (1969 [1950])
<i>AOAT</i>	<i>Alter Orient und Altes Testament</i> (1969-)
<i>ARM</i>	<i>Archives Royales de Mari. Textes cunéformes</i> , Paris (1958-)
<i>BA</i>	<i>Biblical Archaeologist</i> , publ. American School of Oriental Research, New Haven (1938-)
<i>BASOR</i>	<i>Bulletin of the American Schools of Oriental Research</i> , Jerusalem (1919-)
<i>BBB</i>	<i>Bonner biblische Beiträge</i> , Bonn (1950-)
<i>BC</i>	Before Christ
<i>BCE</i>	Before Common Era
<i>BDB</i>	<i>The Brown-Driver-Briggs Hebrew and English Lexicon: With an Appendix Containing the Biblical Aramaic</i> , ed. F Brown; SR Driver; and CA Briggs, Peabody: Hendrickson (2000). (This edition is a revision of the American edition of the BDB first appeared in 1906.)
<i>BETL</i>	<i>Bibliotheca Ephemeridum Theologicarum Lovaniensium</i> , Louvain (1947-)
<i>Bib</i>	<i>Biblica. Commentarii periodici ad rem biblicam scientificè investigandam</i> , Rome (1920-)
<i>BZAW</i>	<i>Beihefte zur Zeitschrift für die alttestamentliche Wissenschaft</i> , Berlin (1896-)
<i>CAD</i>	<i>The Assyrian Dictionary of the Oriental Institute of the University of Chicago</i> , eds. AL Oppenheim, et al, Chicago: The Oriental Institute (1956-)
<i>CBQ</i>	<i>Catholic Biblical Quarterly</i> , Washington DC (1939-)
<i>CE</i>	Common Era
<i>CEDT</i>	<i>Concise Evangelical Dictionary of Theology</i> , WA Elwell, Grand Rapids: Baker (1991)
<i>COS</i>	<i>The Context of Scripture</i> , 3 Vols. ed. WW Hallo, Leiden: Brill (1997, 2000, 2002) <i>COS 1 (1997): Canonical Composition from the Biblical World</i> <i>COS 2 (2000): Monumental Inscriptions from the Biblical World</i> <i>COS 3 (2002): Archival Documents from the Biblical World</i>
<i>CUP</i>	Cambridge University Press
<i>DCH</i>	<i>The Dictionary of Classical Hebrew</i> , Vols I-V, ed. DJA Clines, Sheffield: Sheffield Academic Press (1993-2001)
<i>EDB</i>	<i>Eerdmans Dictionary of the Bible</i> , eds. DN Freedman; AC Mayers; AB Beck, Grand Rapids (2000)
<i>ET</i>	English Translation
<i>GB</i>	<i>Geneva Bible (1599)</i>
<i>HALOT</i>	<i>The Hebrew and Aramaic Lexicon of the Old Testament</i> , 5 vols, by L Koehler and W Baumgartner, rev. W Baumgartner and JJ Stamm, tr & ed. under the supervision of MEJ Richardson in collaboration with GJ Jongeling-Vos and LJ De Regt, Leiden: Brill (1994-2000)
<i>HAT</i>	<i>Handbuch zum Alten Testament</i> , Tübingen (1934-)
<i>HL</i>	Hittite Laws
<i>HSM</i>	Harvard Semitic Monographs (1968-)
<i>HSS</i>	Harvard Semitic Studies (1968-)

<i>HUCA</i>	<i>Hebrew Union College Annual</i> , Cincinnati (1924-)
ICC	The International Critical Commentary of the Holy Scripture of the Old and New Testaments, Edinburgh (1895-)
<i>IDBSup.</i>	<i>The Interpreter's Dictionary of the Bible Supplementary Volume</i> , ed. K Crim, Nashville: Abingdon (1976)
<i>IEJ</i>	<i>Israel Exploration Journal</i> , Jerusalem (1950-)
<i>ISBE</i>	<i>International Standard Bible Encyclopedia</i> , ed. GW Bromiley, Grand Rapids: Eerdmans (1979-1988)
IVP	Inter-Varsity Press
ITC	International Theological Commentary, Grand Rapids (1987-)
<i>JAOS</i>	<i>Journal of the American Oriental Study</i> , Baltimore (1843-)
<i>JBL</i>	<i>Journal of Biblical Literature</i> , Philadelphia (1890-)
<i>JCS</i>	<i>Journal of Cuneiform Studies</i> , New Haven (1947-)
<i>JESHO</i>	<i>Journal of the Economic and Social History of the Orient</i> , Leiden (1957-)
<i>JETS</i>	<i>Journal of the Evangelical Theological Society</i> , Wheaton (1969-)
<i>JNES</i>	<i>Journal of Near Eastern Studies</i> , Chicago (1942-)
<i>JNSL</i>	<i>Journal of Northwest Semitic Languages</i> , Stellenbosch (1971-)
JPS	The Jewish Publication Society, Philadelphia
<i>JSOT</i>	<i>Journal of the Society of the Old Testament</i> , Sheffield (1976-)
<i>JSOTSS</i>	<i>Journal of the Society of the Old Testament Supplementary Series</i> , Sheffield (1976-)
KAR	<i>Keilschrifttexte aus Assur religiösen Inhalts</i> , ed. E Ebeling, Leipzig: JC Hinrichs (1919-1923).
<i>KJV</i>	<i>King James Version</i> , London (1611, 1769)
LE	Laws of Eshnuna
LH	Laws of Hammurabi
LL	Laws of Lipit-Ishtar
LU	Laws of Ur-Namma
LXX	Septuagint (the Greek Old Testament, translated between 250-100 BCE)
<i>MACUAS</i>	<i>Mosaic of Ancient Cultures Academic Series</i> , Stellenbosch (2002-)
MAL	Middle Assyrian Laws
NABU	Nouvelles Assyriologiques brèves et utilitaires
<i>NASB</i>	<i>New American Standard Bible</i> , Nashville: Lockman Foundation (1960-1977)
NBL	New Babylonian Laws
NE	Near East
<i>NEB</i>	<i>The New English Bible</i> , Oxford & Cambridge: OUP & CUP (1961, 1970)
<i>NET</i>	<i>New English Translations</i> , Biblical Studies Press (1996-2005) ( <a href="http://www.bible.org/netbible">http://www.bible.org/netbible</a> )
<i>NGTT</i>	Ned Geref Teologiese Tydskrif
<i>NICOT</i>	New International Commentary on the Old Testament, ed. RK Harrison, Grand Rapids: Eerdmans (1976-)
<i>NIDOTTE</i>	<i>New International Dictionary of Old Testament Theology and Exegesis</i> , Vols 1-5, ed. WA VanGemeren, Grand Rapids: Zondervan (1997)
<i>NIV</i>	<i>New International Version</i> , Colorado Springs: International Bible Society (1973, 1978, 1984)
<i>NJB</i>	<i>Jew Jerusalem Bible</i> , London: Longman & Todd (1985)
<i>NLT</i>	<i>Holy Bible: New Living Translation</i> . Wheaton: Tyndale (1996).
<i>NRSV</i>	<i>New Revised Standard Version: the Holy Bible Containing the Old and New Testaments with the Apocryphal/Deuterocanonical Books</i> (Anglicized Edition). Oxford: OUP (1995)
NT	New Testament
OT	Old Testament

OTL	Old Testament Library, London (1960-)
OTSSA	Old Testament Society of South Africa
OUP	Oxford University Press
<i>PEQ</i>	<i>Palestine Exploration Quarterly</i> , London (1937-)
<i>RB</i>	<i>Revue Biblique</i> , Paris (1892-)
<i>RHPPhR</i>	<i>Revue d'histoire et de philosophie religieuses</i> , Strasbourg, etc (1921-)
RS	Ras Shamra (field numbers of tablets excavated at Ras Shamra)
<i>RSV</i>	<i>Revised Standard Version</i> (1971)
SBAB	Stuttgarter biblische Aufsatzbände, Stuttgart (1988-)
SBL	Society for Biblical Literature, Decatur (1890-)
SBS	Stuttgarter Bibelstudien, Stuttgart (1965-)
SP	Samaritan Pentateuch
SPCK	Society for the Promotion of Christian Knowledge
<i>TDOT</i>	<i>Theological Dictionary of the Old Testament</i> . 15 vols, eds. GJ Botterweck; H Ringgren; and HJ Fabry, trs JT Willis, et al. Grand Rapids: Eerdmans (1974-2006). (The ET is from <i>Theologisches Wörterbuch zum Alten Testament</i> Lieferungen 1-4, 1970, 1971, 1972 published by Verlag W Kohlhammer GmbH, Stuttgart.)
<i>TLOT</i>	<i>Theological Lexicon of the Old Testament</i> . Vols 1-3, E Jenni & C Westermann, tr Mark E Biddle, Peabody: Hendrickson (1997)
TOTC	Tyndale Old Testament Commentaries, ed. DJ Wiseman, Leicester: IVP (1967-).
<i>TUAT</i>	<i>Texte aus der Umwelt des Alten Testaments</i> , ed. O Kaizer, Gütersloh (1984-)
TWAT	Theologisches Wörterbuch zum alten Testament
UF	Ugarit-Forschungen
UT	<i>Ugaritic Textbook</i> . Analecta Orientalia 38, CH Gordon, Rome: Pontifical Biblical Institute (1965).
VAB	Vorderasiatische Bibliothek
VAT	Vorderasiatische Tontafeln (clay tablets in Berlin Museum followed by museum number)
√ <sup>Ken 69 etc</sup>	Varia lectio codicis manuscripti Hebraici 69 etc secundum B. Kennicott.
<i>VT</i>	<i>Vetus Testamentum</i> , publ. for the International Organization for the Study of the Old Testament, Leiden (1951-)
<i>VTSup</i>	<i>Vetus Testamentum, Supplements</i> (1951-)
WBC	Word Biblical Commentary, Dallas (1987-)
WMANT	Wissenschaftliche Monographien zum Alten und Neuen Testament, Neukirchen (1960-)
YOS	Yale Oriental Series, New Haven.
ZAW	<i>Zeitschrift für die alttestamentliche Wissenschaft</i> , Berlin (1881-)

**Note:**

Abbreviations for Old Testament, New Testament, and Deutero-Canonical books follow the abbreviations of the NIDOTTE.

*For Debbie and Vanoh*

## Chapter One

### INTRODUCTION

#### 1.1 MOTIVATION AND OBJECTIVE OF THE STUDY

When one reads the Old Testament, one could easily identify the implications of a patriarchal society with its concomitant negation of the voices of the marginalised (women, children, poor and needy, slaves, aliens). In many cases, this marginalisation is justified by claiming it as God's blueprint for how a society should function. We may call this a theological-ethical qualification of patriarchy. Primogeniture is one of the implications and manifestations of patriarchy. Thus, as the title suggests, this dissertation is a research on primogeniture in the Old Testament, with an aim that the endeavour would perhaps lead towards a theological-ethical understanding of patriarchy in ancient Israel. Before we proceed further, it is important first to analyse recent scholarly definitions and criticism of patriarchy in the Old Testament, which form a part of the motivations of this research.

Patriarchy, according to a modern definition, is a social system characterized by the supremacy of males and the subordination of women, and "patriarchal" as an adjective describes "male domination over virtually every aspect of women's lives (political, economic, social, sexual, religious, etc.) in a given culture" (Cadorette, et al 1996:297 and works cited there). It is also termed as an androcentric culture where values and powers centre on male perceptions, interpretations, experience, needs, and interests (Paula Cooley, Eakin, and McDaniel 1991: xi-xii). More specifically from an African perspective, patriarchy is defined as "the power of the fathers; a familial, social, ideological, political system in which men – by force, direct pressure, or through ritual, tradition, law and language, customs, etiquette, education, and the division of labour – determine what part women shall or shall not play, and in which the female is everywhere subsumed under the male" (Swart 1996:57). In a more systematic, scientific and refined way, Gerda Lerner (1986:239) defines patriarchy as "the manifestation and institutionalization of male dominance over women and children in the family and the extension of male dominance over women in society in general." Lerner's definition, which this research largely follows in its description of patriarchy, implies that although women are not totally powerless or totally

deprived of rights, influences, and resources, men are leaders of their families and hold power in all the important institutions of society. Women are generally deprived of access to such power.

Some (e.g., Devora Steinmetz 1991:11-34; see also works cited in De Vaux 1961:19) suggest that matriarchate, associated with small-scale cultivation, as against patriarchy, which was associated with pastoral civilisation, was more common in primitive societies. They argue that matriarchal regimes were the original form of families among the Semites. According to this construct, the characteristic mark of a matriarchate is not that the mother exercises authority (this is rare), but that a child's lineage is traced through the mother. The child belongs to the mother's family and social group, and is not considered related to his father's family connections and even the rights of inheritance are fixed by maternal descent. Contending this hypothesis, De Vaux (1961:19-21) argues that the ancient Israelite family was neither matriarchal nor fratriarchal, but patriarchal (see also Van der Toorn 1996:198-199; Perdue 1997b:246; King & Stager 2001:5, 39-40). This argument is based on the fact that manifestations of many of the above definitions of patriarchy could be found in the Old Testament, ancient Israel for that matter.

The Hebrew term for the family is *ba tyb* (father's house). The term itself carries a patriarchal connotation whereby an Israelite father exercised authority over his wives and children, even over his married sons and their wives, especially if they lived together. In early times this authority included even the power over life and death. Thus Judah condemned Tamar, his daughter-in-law, to death when she was accused of misconduct (Gen 38:24). Marriage was patrilocal (Gen 24). The wife left the *ba tyb* of her father to reside in the *ba tyb* of her husband. The husband was the 'master' [*l* [*b*] of his wife (2 Samuel 11:26). The genealogies (Gen 10; 25:12ff.; 35:23-26; 36:9-43; etc) were reckoned through patrilineal descents. Women were rarely mentioned and were excluded from inheritance and succession. The nearest relation in the collateral line was the paternal uncle (cf. Lev 25:49). In the society, legal instructions were addressed to men, not women. Masculine forms for generic speech were often used. Most characters in the Old Testament literature are male. Men dominated in public offices (elders, rulers, judges, civil and military officials). In cultic life, almost all the prophets were male and only males could become priests (De Vaux 1961:19-21; Van der Toorn 1996:198-199; Perdue 1997b:246). These are indeed manifestations of a patriarchal system. Thus we could possibly conclude that ancient Israel was a patriarchal society.

Judged by experiences of the marginalisation of the female sex, even oppression and exploitation females experienced in the patriarchal societies then and now, some (see below) argue that patriarchy is unacceptable and irrelevant for any society of any generation. The Old Testament is thus depicted as being wrong in its advocacy and practice of patriarchy both in terms of its world and for the world today (Matthews and Moyer 1997:29; see also Elisabeth Fiorenza 1983-1994; Rosemary Ruether 1975-1997; Elizabeth Johnson 1992). Owing to its male dominated and female exploitative patriarchal familial system, the Old Testament is thus viewed as incompatible with the ideal egalitarian familial system where gender equality, justice and love would rule. This resulted in six different models of responses to patriarchy in the Old Testament.

***First model: Redemptionists/reformists***

This model, which sees patriarchal chauvinism in the Bible and desires to overcome it, is represented in two forms. One attempts to redeem the patriarchal character of the Old Testament by looking for positive roles of women in the Old Testament. The other seeks a usable hermeneutics in the prophetic tradition, appealing to the prophetic teachings of a just society free from oppression, or calls for a feminist ‘hermeneutic of suspicion’ (see Rodd 2001:250 and works cited there; see also Ruth Tucker 1992). In spite of its patriarchal nature, some believe that “it is still possible to use the Bible” (Caroll 2000:21; see also Sharon Ringe & Carol Newsom 1998). Early feminist movement<sup>1</sup> employs both of these approaches, using opposing proof texts as a method by which they counter certain biblical passages with others that are thought to be supportive of their case. They also study female biblical characters and identify with either their moments of glory or their suffering (Marsman 2003:2). They argue that, as androcentric tradition is destructive, traditions of gender mutual respects, including women’s “lost” place in it should be “retrieved” (see Thiselton 1992:431 and literature cited there).

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<sup>1</sup> For all practical purposes, feminism is divided into two waves of movements, the first started at the end of the nineteenth century and the second in the sixties of the twentieth century. The year 1848, in which the Women’s Rights Convention was held at Seneca Falls, is generally regarded as the beginning of the first wave in the United States. Twenty years later, the publication of Stuart Mill’s *Subjection of Woman* in 1869 is often taken as the starting point for the feminist movement in Britain. By 1920s most European countries granted women the right to vote. Feminism is represented in three intellectual traditions: evangelical Christianity, Enlightenment philosophers, and communitarian socialism. Feminists may also be largely grouped into three: post-Christian feminists, revisionists, and biblical feminists (Marsman 2003:1-2; Rodd 2001:18; see also Thiselton 1992:431-462 and literature cited there).

***Second model: Reconstructionists (revisionists)***

This model, a diachronic approach as against other models which are largely synchronic approaches, proposes a reinterpretation and reconstruction of the Old Testament texts that ascribe female inferior status (cf. Adam 1995; Moore 1992, 1994; McCant 1999; Denise Carmody 1994; Cobb 2002; especially Phillis Tribble 1984). Many other feminist scholars (see below) too belong to this school.

As noted above, for Lerner (1986:239), ancient Israel's *ba tyb* would best represent "paternalism" or "paternalistic dominance." This phenomenon of paternalistic dominance of the family, according to Lerner (1986:216-219), was created somewhere in the second millennium BC as a result of the formation of private property. This was described as the beginning of male dominance and the world historic defeat of the female sex. Prior to that, human societies may or may not have been matriarchal, but they were egalitarian (Lerner 1986:21). Lerner (1986:6) then concludes that since the creation of patriarchy or paternalistic dominance is historical (a product of nurture, not nature), it could be ended by history again:

I began with the conviction, shared by most feminist thinkers, that patriarchy as a system is historical: it has a beginning in history. If that is so, it can be ended by historical process. If patriarchy were "natural," that is, based on biological determinism, then to change it would mean to change nature. One might argue that changing nature is precisely what civilization has done, but that so far most of the benefits of that domination over nature which men call "progress" has accrued to the male of the species. Why and how this happened are historical questions, regardless of how one explains the causes of female subordination.

Lerner rightly concludes that patriarchy as a system is historical; therefore, it can be ended by historical process. However, her assertion that, human societies were egalitarian prior to patriarchy is not without counter arguments. Lerner does not include Goldberg (1977), *The Inevitability of Patriarchy*, in her bibliography. Goldberg (1977:199-207), discovering the universal dominance tendency of males in all societies, including societies that were allegedly regarded as matriarchal or egalitarian, concludes that no human society was ever matriarchal or egalitarian; all human societies have always been patriarchal. It is not because men performs tasks better than women, nor is it a legacy from the days when physical strength mattered more than it does now, but it derives from the simple fact that on average men have greater drive towards dominance. Goldberg does not advocate that male dominance is the right thing for the family and society, nor does he suggest that men are more important or more capable than women. His thesis is a reaction to those who are reticent to see the world as it is because they would like it to be different.

Although the titles of Lerner's and Goldberg's works suggest opposing ideas, the implications of their hypotheses are essentially the same. If human society is patriarchal because men on average have greater drive than women do towards dominance, then this too is an indication that the percentage of the tendency of dominance on the part of men could increase or decrease in the process of time and space. This again lends support to Lerner's hypothesis that patriarchy is a historical process; therefore, it can also be ended by historical process.

On her part, Carol Meyers (1992:250-251; 1988:186-196) suggests that the shift of the Israelite society from a rural setting to an urban setting during the monarchical period of the Iron Age II changed gender relations and women's considerable high status and roles during the family, clan and tribal period of the Iron Age I, although there may have been less change amongst those who remained in the rural settings. Owing to the shift from the family household to a centralised government with a bureaucracy composed solely of male officials, women began to receive lower status and privilege. The economic development that provides a "mass" supply of both luxury items and basic goods, as well as an increase in the types of services available outside the context of the household, could have also contributed to the loss of the household's status as a self-sufficient economic unit (at least in urban contexts). This led to women becoming less essential and having fewer potential roles to fulfil. This would have resulted in an increase in gender differentiation and a corresponding decrease in women's power and status. If city household were composed of nuclear families rather than extended ones, the extent to which a woman was able to exercise authority would also have decreased. Women appearing occasionally in leadership roles – such as queen mother, prophets, and wise women – may represent a larger group of publicly active women whose identities were lost as the result of the male-controlled canonical processes (see also McNutt 1999:171).

For Gerstenberger (1996:10), "the contemporary living condition and means of production" necessitated a patriarchal system of family in ancient Israel. This argument too supports patriarchy as a historical process:

From today's perspective, the patriarchal structure of the family appears tedious for men, discriminatory against women, and unjust... The fact is, no such fundamental critique was ever uttered in biblical antiquity, and the patriarchal extended family was a stable social microstructure growing out of the contemporary living conditions and means of production.

Ruether (1975-1997, especially 1983) is one of the first feminist scholars who adapts a diachronic approach to patriarchy in the Bible. For Ruether (1983:14, 22), the canonisation process of the

Bible may have been aimed at marginalising and suppressing certain branches and segments of society. For this reason, she challenges others to examine other (“heretical”) traditions alongside the Hebrew Bible, such as Gnosticism, Ancient Near East myths like those from Ugarit, for possible resources for studying feminist theology. However, she admits that those traditions too need to be evaluated and corrected by the feminist principle. Thus, Ruether (1983:62), combining her historical-critical approach with feminist theology, champions the promotion of the full humanity of women according to the prophetic principle of the Bible. Contending that male monotheism was to blame for the social oppression of women in ancient Israel, she then proposes that everything in the Bible that was patriarchal had to be denounced in accordance with the prophetic-liberating tradition.<sup>2</sup>

Ruether’s approach helps to put the social position of Israelite women in a clearer perspective. However, it proceeds on the tacit assumption that women may have fared better in non-biblical texts. The consequences of opposite findings, that is, more evidence of the same repressive tendencies in non-biblical texts and the choice of a theologically acceptable prophetic tradition are hardly reflected upon. It is helpful to focus on the essentials, but these too are bound to be subjective, since, as Ruether herself acknowledges, the male prophets were far removed from rejecting female discrimination. Although we have some evidence of women directly relating to God, for example, Hannah prayed to God (1 Sam 2:1-10) and Naomi protested to God (Ruth 1:20-21), Ruether is right in a sense that women in ancient Israel generally related to God through men. Some still share Ruether’s argument about the gender-related symbolic hierarchy in monotheism (Marsman 2003:25-26). However, the discovery of Israel’s polytheistic Ancient Near East neighbours as rigid patriarchal as Israel (see Chapter Two) makes Ruether’s argument no more tenable.

Other proponents of a reconstructionist model include Fiorenza (1992b:786-787), who discusses four main “hermeneutical strategies developed by feminists.” These relate to a separation of positive texts from stories of women as victims, retelling of women character stories so as to break

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<sup>2</sup> Ruether thus asserts: “God is modeled after the patriarchal ruling class and is seen as addressing this class of males directly, adopting them as his ‘son.’ They are his representatives, the responsible partners of the covenant with him. Women as wives now become symbolically repressed as the dependent servant class. Wives, along with children and servants, represent those ruled over and owned by the patriarchal class. They relate to man as he relates to God. A symbolic hierarchy is set up: God-male-female. Women no longer stand in direct relation to God; they are connected to God secondarily, through the male...Thus the hierarchy of God-male-female does not merely make woman secondary in relation to God, it also gives her a negative identity in relation to the divine. Whereas the male is seen essentially as the image of the male transcendent ego or God, woman is seen as the image of the lower, material nature” (Ruether 1983:53-54).

the marginalizing tendencies in the androcentric text, recovering works written by women to discover woman's voice, and applying a hermeneutics of suspicion to see androcentric texts as windows or mirrors of women's reality in the antiquity.

There are largely three stages in feminist approaches to the Bible. The first stage of feminist approach to the Bible is to document the case against women, which in turn leads to five conclusions: failure to appreciate the Israelite culture and thus condemn the biblical faith as hopelessly misogynous; using the evidence of female oppressive patriarchal culture in the Old Testament to support anti-Semitism; treating the Bible as a historical document devoid of continuing authority; despair over the male power that the Bible and its commentators hold over women; and thus demanding a new approach to the Bible. The second stage feminists attempt to discern a critique of patriarchy within the Bible by highlighting neglected texts, accentuating neglected females in the Bible, and reinterpreting familial women such as Eve. Feminists in the third stage offer sympathetic readings of abused women, such as the Levite's concubine in Judges 19. Feminist hermeneutics also adopt one or all of the following three options: looking to texts about women as a counter against texts used 'against' women; looking for a theological perspective offering a critique of patriarchy; and looking for texts which reveal to women their true position. In so doing, any position adopted by feminists involved emphasising some features of the Hebrew Bible and sliding over others. Thus, for reconstructionists, the Old Testament does not have a thematic unity. What is needed is a deconstruction of the patriarchal texts.<sup>3</sup>

Elizabeth Stanton (1895, 1898) is probably one of the foremost representatives of feminist biblical scholarship in the nineteenth century. Arguing that Christianity was found in a patriarchal cultural foundation, she laments about false translations, interpretations and symbolic meanings of the Bible that could not change the fact that the Bible is a patriarchal book which does not contain God's message of equality between male and female. She concludes the second part of *The Woman's Bible* (p. 214):

The real difficulty in woman's case is that the whole foundation of the Christian religion rests on her temptation and man's fall, hence the necessity of a Redeemer and a plan of salvation. As the chief cause of this dire calamity, woman's degradation and subordination were made a necessity. If, however, we accept the Darwinian theory, that the race has been a gradual growth from the lower to a higher form of life, and that the story of the fall is a myth, we can exonerate the snake, emancipate the woman, and reconstruct a more

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<sup>3</sup> See Rodd 2001:251 and literature cited there, especially Phyllis Trible, "Born and bred in a land of patriarchy: The Bible abounds in male imagery and language," Katharine Sakenfeld, "Feminist Uses of the Bible," and Danna Fawell, "Feminist Reading of the Bible" for further discussion.

rational religion for the nineteenth century, and thus escape all the perplexities of the Jewish mythology as of no more importance than those of the Greek, Persian and Egyptian.

Although Stanton did not reject the Bible, but rather engaged with it and therefore acknowledged the text, her opinion on the irreconcilability of patriarchal faith and interpretation of the Bible reached such a proportion in the latter part of her life that just months before her death she envisioned a Bible from which all passages detrimental to women would have been reconstructed if not removed totally (see Marsman 2003:11 and literature cited there).

***Third model: Rejectionists:***

The rejectionist model, sometimes referred to as post-Christian model, views the Bible as promoting oppressive patriarchal structure, and must therefore, be rejected. Advocates of this school assert that the Old Testament is wrong and irrelevant because it is irredeemably male-dominated and a female-oppressive patriarchal book that cannot be accepted by modern society. Not only is Old Testament patriarchy wrong for the modern society, it was socially, politically, and theologically wrong in terms of its world as well (Ruether 1983, Fiorenza 1988, Johnson 1992, Matthews and Moyer 1997). For this school, patriarchy, both in terms of family and society, is wrong and irrelevant for any society of any generation. This model views the canon of Scriptures as “inherently patriarchal and reflective of the worldview of its male authors” (see Carroll 2000:19-20 and works cited there). Therefore, they would “prefer doing away with the notions of canon and biblical authority altogether... because the text is perceived to be hopelessly and irretrievably androcentric” (Carroll 2000:20).<sup>4</sup> The most vocalist rejectionist seems to be Mary Daly (1973), who attempts to formulate a post-Christian faith that would go beyond patriarchal religion and transcend into a sisterhood as cosmic covenant.

***Fourth model: Loyalists:***

The foundational premise of this model, often associated with evangelical Protestantism, orthodox, and catholic Christian doctrines, is the essential validity and goodness of the biblical tradition as the Word of God, which cannot be dismissed under any circumstance. This model, too, is represented in two forms. The first form accepts patriarchy, as expressed in the Old Testament, as God’s design for the family and society, believing that a socio-religious order through hierarchy

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<sup>4</sup> For arguments for the process and unity of canonical books and their reliability, see Sanders (2001); Waltke (2001).

is what the Bible teaches. Women are to submit to male leadership, yet enjoying true freedom and dignity (Kirsten Birket 2000). The second form advocates gender equality by asserting that the full biblical (Old and New Testaments) data call for it (see Rodd 2001:250-251 and literature cited there). For the loyalist model, subordination of women needs to be understood as the necessary leadership of one and followership of the other as the only and divinely intended way to unity and harmony in society (see Marsman 2003:14 and literature cited there).

***Fifth model: Sublimationists:***

This model relates the validity of the Bible to its expressions of the Divine as the Eternal Feminine. It even suggests that the Israelite society was originally matriarchal. It develops a gynocentric world view in which (mother) goddess, creation and cosmos coalesce. Every woman embodies the cosmic and creating power of the Goddess. The sublimationists stress and cherish the otherness of the feminine, fix social roles of woman and man, emphasise the femininity of divine Wisdom and the feminine character of the Holy Spirit, and glorify the eternal feminine in biblical symbolism (see Marsman 2003:7, 18 and literature cited there).

***Sixth model: Feminist-Liberationists:***

Feminist-Liberationists regard the interpretive community of contemporary women as the centre of their hermeneutics. In contrast to reformists/revisionists – whose main interest is the preservation of biblical traditions, be they texts that reflect the experience of women or texts that are misogynist, the main interest of feminist-liberationist hermeneutics is to connect exegesis with the practice of women's liberation. Thus they too tend to neglect the historical dimension of the Bible as irrelevant to their struggle (see Marsman 2003:19-20 and literature cited there).

Rodd (2001:251) rightly argues that all these models (even the loyalists who accept a patriarchal Bible as divine truth) “are controlled by present-day ethical stances and all fail to appreciate how the situation in ancient Israel would have looked to those living at the time.” In this researcher's opinion, the first model and the second form of the fourth model attempt to redeem the unredeemable. Whether one likes it or not, whether politically, philosophically, socially, and culturally correct or not, the Old Testament, its familial structure in particular, is irredeemably patriarchal.

The position of the first form of the fourth model claims to be faithful to the teaching of the Scripture. However, it fails to understand that some forms and nuances of the Old Testament patriarchy were culturally and contextually conditioned. The second and third models are perfectly right in asserting that the Old Testament is patriarchal. It is true that patriarchy as expressed in the Old Testament has its own share of oppression and exploitation of women, children, the poor and the weak. However, reading the modern definitions of patriarchy, androcentrism, oppression and exploitation that women experience in a given society into the Old Testament would do an injustice to the *ba tyb* (patriarchal family) institution of ancient Israel. Although the fifth and sixth models (sublimationist and feminist-liberationist approaches) may give women possibilities to understand themselves and to relate criticism on the subjection of women to a critical review of social and political structures respectively, as Marsman (2003:19, 20) rightly warns, the sublimationist approach has the tendency to incline towards separation and exclusivism on the social and political level. The feminist-liberationist approach has the problem of accepting patriarchal culture as a vehicle for receiving God's revelation. For them, whatever is seen as restricting or denying full humanity to women cannot have authority, that is, it cannot reflect the divine. The result of this model would be the creation of canon within the canon, leaving only a small selection of texts.

In the final analysis, this researcher concurs with the reconstructionists' diachronic approach to patriarchy, which argues that patriarchy as a social system is a historical process; therefore it can and should be reconstructed in line with the creation theology of gender equality in the Bible. This is one of the central motifs of this research (we will return to this in Chapters Four and Five).

We could possibly fill all the pages of this research with the feminist criticism of patriarchy and its counter arguments. However, this research is not a study on feminist hermeneutics, nor is it a general anthropological and sociological study of patriarchy. The primary focus of the research is understanding primogeniture in the Old Testament with an aim that it would perhaps lead towards a theological-ethical understanding of patriarchy in ancient Israel. Thus, we have not attempted to do a full review of feminist hermeneutics; nor have we reviewed all recent publications on patriarchy. We only attempted a cursory review of selective works on the definition and criticism of patriarchy to motivate the research as well as to serve as background information for our theological-ethical studies of patriarchy. Therefore, we shall conclude our discussion on the definitions and criticism of patriarchy in the Old Testament at this stage and continue with the

definitions of primogeniture (for fuller discussion on feminist hermeneutics, see Thiselton 1992: 430-462).

“Firstborn” is a central theme of the Old Testament. “First-bornship” (Tigay 1996:196) or primogeniture may be defined as the system of inheritance and succession whereby the whole estate and headship of the family descends to the oldest son to the exclusion of sisters and younger brothers (Hagedorn 2004:201, n. 7; see also Todd 1993:392). Primogeniture in royal or dynastic succession refers to the system whereby the oldest/firstborn son succeeds the throne. Many societies then and now practised primogeniture in one form or another (cf. Tigay 1996:195-196). In recent years, there have been scholarly discussions concerning whether primogeniture was taken for granted in ancient Israel (see Chapter Three). A careful study of some of the texts relating to the firstborn in the Old Testament would indicate that primogeniture was a generally practised custom in ancient Israel. Predominantly male dominant genealogies were reckoned largely through the lines of the firstborn son. The prime heirship of the family (two-thirds of the estate) went to the firstborn son (Gen 25:29-34; Deut 21:17). The firstborn prince succeeded his father as king (2 Chr 21:3; see also Gen 25:5-6; 1 Sam 20:31; 1 Ki 2:15, 23-25; 2 Ki 3:27; 2 Chr 21:16-22; 1 Prov 31:2) (we will return to a review of recent scholarly opinions on “Primogeniture in the Old Testament” in Chapter Three).

The above definitions and implications of patriarchy and primogeniture in the Old Testament indicate a link between these two social systems. Asking the following questions will further illumine their link: What was the basis for making the firstborn the prime heir of the ancient Israelite patriarchal family? Was the rule primogeniture God’s static blueprint for all societies for all generations? In other words, what theological-ethical perspectives does the Old Testament formulate concerning primogeniture? If there is a link between primogeniture and patriarchy, could a theological-ethical understanding of primogeniture in the Old Testament then lead towards a theological-ethical understanding of patriarchy in ancient Israel? To find possible answers to these questions, that is, to analyse the link between primogeniture and patriarchy in ancient Israel, is the motivation of this research. In so doing, in the following, the above questions are consolidated into one main research problem, followed by the hypotheses of the research and methodological considerations for testing the stated hypotheses.

## **1.2 RESEARCH PROBLEM**

What theological-ethical perspectives does the Old Testament formulate on primogeniture and how does it influence a theological-ethical understanding of patriarchy in ancient Israel?

## **1.3 RESEARCH HYPOTHESES**

A multidimensional exegesis of the primogeniture text of Deuteronomy 21:15-17 would reveal that there was a significant link between primogeniture and patriarchy in ancient Israel. For this reason, the study of primogeniture in the Old Testament will inform our theological-ethical understanding of patriarchy in ancient Israel.

## **1.4 METHODOLOGICAL CONSIDERATIONS**

### **1.4.1 Qualification of the research title**

As noted above, the title for this research is “Primogeniture in the Old Testament: Towards a Theological-Ethical Understanding of Patriarchy in Ancient Israel.” The main title focuses on a study of primogeniture in the Old Testament. The sub-title suggests patriarchy as being descriptive of the ancient Israelite societal system. The link between the main title and sub-title is the notion that primogeniture in the Old Testament is a manifestation of patriarchy in ancient Israel. Primogeniture functions as a unifying force for the integration and solidarity of ancient Israel’s patriarchal family as well as a cornerstone for its continual survival. It is also the bearer of the patriarchal family name/title which is strongly associated with the continual holding of the patrilineal family land. There is no direct corresponding Hebrew word for the term “patriarchy” in the Old Testament, although the Old Testament uses numerous androcentric terminologies. The closest to the word “patriarchy” in the Hebrew Bible is the term *bā t̄yb* (father’s house) and its related terms (see Chapters Three and Four). But these terms cannot be exclusively rendered as “patriarchy” in a true sense of the word. However, terms relating to primogeniture that suggest patriarchy, such as “firstborn” or “firstborn son” [*rkb*] and primogeniture or the right of the firstborn [*hrkb j̄pvm*] are explicitly attested in the Old Testament. Therefore, the research hypothesises that understanding primogeniture in the Old Testament will help towards a better understanding of patriarchy in ancient Israel. The title also suggests that patriarchy in ancient

Israel was not merely a socio-anthropological phenomenon; it was deeply rooted in Israel's theological-ethical understanding of God and the family.

#### 1.4.2 A multidimensional exegesis with a theological-ethical emphasis

*Pachâ dâh chi hluphi hry lia* (In the midst of many [doctrinal] views)

*Sie thai va, ei tyhreh kaw ty* (I know not which way to go)

*Thlahpa Biehmeihseih nâ chhi la* (O lead me, the Spirit, the Truth)

*Lâthlôh lia ei sie lyma aw* (I will follow the Way)

The above Marâ spiritual song (author unknown, researcher's translation) laments the emergence of a variety of doctrines and asks God to help him choose the right one. The song does not call for a moratorium on formulating new doctrines; it only wants to know and follow the right one. Old Testament interpretation today is blessed with (or sometimes wearied by?<sup>5</sup>) a variety of approaches. As Jonker (1996:17-18) rightly notes, recent years alone have witnessed a dramatic increase of approaches – from the nineteenth-century Enlightenment's historical-critical approach to anthropological, sociological, literary, structural, deconstructional, semiotic, canonical, rhetorical, reception theoretical, and many other approaches<sup>6</sup> (see footnotes of Jonker 1996:17-18 for authorities of these approaches). The emergence of the multiplicity of approaches makes methodological possibilities and Old Testament interpretation exciting.

However, experiencing limitations in a one-dimensional approach (that is, the exclusive employment of a single approach), some scholars in recent years rightly suggest the utilisation of a combination of approaches or methodologies (Hasel 1991; House 1998), a multidimensional approach (Jonker 1996;<sup>7</sup> Patte 1995), or a unified interpretive method (Robbins 1996b, which accommodates and integrates a variety of analytical approaches – literary, rhetorical, historical,

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<sup>5</sup> Schökel (1998:170) laments that biblical scholarship today is more concerned about biblical scholarship than about the Bible itself.

<sup>6</sup> See also House (1998:54-55, 618, 634 and works cited there); Hasel (1991:28-114 and works cited there) for a brief review of approaches to the Old Testament. More recently, Gerstenberger (2002) argues that Old Testament does not consist of a single unified theology but theologies, hence *Theologies in the Old Testament* for the title of his book.

<sup>7</sup> Jonker (1996:71) defines a multidimensional exegetical method as “the interrelation among exegetical methodologies in a systematic and ordered way. Every methodology is allowed to operate according to its own approach, and by means of its own method(s). However, instead of operating exclusively on its own, the exegetical process and results are being coordinated and related to those of other approaches and methods ... A ‘multidimensional’ exegetical process does not deprive the exegete of making exegetical decisions in a more responsible way. Not only one view on the biblical text... will be taken into consideration, but various views will benefit his/her ‘position’ as exegete.”

sociological, ideological, and theological). Robbins (1996b) programmatically articulates the above “combination”, “multidimensional”, or “unified” approaches under the umbrella of a socio-rhetorical approach.<sup>8</sup> This research will adapt and appropriate Robbins’ (1996b) programmatically articulated multidimensional approach, which he calls “socio-rhetorical interpretation.”

In so doing, the methodology considered for this research is *a socio-rhetorical interpretation of the primogeniture text of Deuteronomy 21:15-17, with special emphasis on its theological-ethical<sup>9</sup> meanings and nuances*. The research opts for a multidimensional approach to the text not only due to a multidimensional character of the text, but also due to a multidimensional nature of meaning. The meaning of the text is not only rooted in the mind of the author, literary organization of the text, or in the mind of the reader. All three aspects of meaning are interrelated and influential in our suggestion or argument about what a text means. To find a theological-ethical meaning and nuances is part of a socio-rhetorical approach. The reason for according it a special emphasis is obviously because this research is not a study on Old Testament history or literature, but on theology. According to Zimmerli (1978:12), Old Testament theology may be defined as “the task of presenting what the Old Testament says about God as a coherent whole”. Ethics in short is “rules of human behaviour” in general and “norms of Christian conduct” for Christians in particular (Deist 1984:87). Thus Old Testament ethics refers to moral principles and behaviour which the Old Testament prescribes and subscribes. In this sense, theology and ethics are two sides of the same coin in the Old Testament. Consequently in this research, a hyphenated ‘theological-ethical’ form is adopted, instead of ‘theological and ethical’. When the nominative form of ‘theology and ethics’ is used, it is interchangeable with the hyphenated adjectival form of ‘theological-ethical.’

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<sup>8</sup> Robbins first introduced his socio-rhetorical interpretation in 1984, *Jesus the Teacher: A Socio-Rhetorical Interpretation of Mark*, reprinted with a new introduction in 1992. Since then, Robbins has worked determinedly, very intelligently, and with increasing influence on the socio-rhetorical program, elaborating its conceptual foundations, retooling old methods, inventing new ones, and demonstrating the rewarding utility of his approach in countless articles and lectures throughout the world. The *Exploring the Texture of Texts: A Guide to Socio-Rhetorical Interpretation* is both the culmination of his decade-long efforts to think through and experiment with socio-rhetorical criticism and – at last, and for the first time – his programmatic articulation of it (Braun 1998:381-382).

<sup>9</sup> For centuries most Christian churches formulated their theology and ethics based mainly on the New Testament, as the Old Testament is regarded *old*, obsolete and irrelevant. However, the last two decades have witnessed a steady and encouraging growth of scholarly interest in the theological-ethical dimensions of the Old Testament, particularly its authority and relevance for the modern world (e.g., Wright 1983; Kaiser 1987; Birch 1991; Childs 1992; Janzen 1994; Seitz 1996; Brueggemann 1997; Barton 1998; Birch et al 1999; and Gerstenberger 2002. List is in ascending order of dates, not in order of priority of importance). This research attempts to follow the footsteps of this “interest group.”

In Robbins' (1996b:1) socio-rhetorical method, the hyphenated prefix "socio-" is used to refer to the rich resources which modern social science theories<sup>10</sup> bring to the interpretation of biblical texts. The term "rhetorical" refers to the way language in a text serves as a means of communication among people. Robbins (1996b:1) then defines socio-rhetorical interpretation as an approach to literature that focuses on values, convictions, and beliefs both in the texts we read and in the world in which we live, inviting detailed attention to the text itself, moving interactively into the world of the people who wrote the texts and into our present world. Integrating the ways people use language with the ways they live in the world, Robbins (1996b:1) asserts that "rhetorical analysis and interpretation gives special attention to the subjects and topics a text uses to present thought, speech, stories, and arguments."

Although Robbins (1996b:1) claims to have incorporated social-scientific and rhetorical criticism (particularly Watson and Hauser 1994), literary criticism (Peterson 1978; Powell 1990), postmodern criticism (Moore 1992, 1994; Adam 1995), and theological criticism (Schneiders 1991) in developing his socio-rhetorical method, it appears that he relies more heavily on the first two (social-scientific approach discussed above and rhetorical criticism<sup>11</sup>) than the other three

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<sup>10</sup> Although sociological approach has been systematised only recently, the interest in applying social science methods to biblical studies is not a recent phenomenon. Michaelis (see Rogerson 1984:3-5) attempted to use a comparative method in order to understand the Bible way back in the mid-eighteenth century and the New Testament scholarship witnessed the use of this approach in the middle of the nineteenth century (Rogerson 1984:3-5). With the works of Durkheim (see Lukes 1975:27), who says that "social phenomena are realities to be explained only by other social phenomena" and Weber (see Mayes 1989:19), who defines sociology as "a science concerned with the subjective meanings and interpretations of social actors in the search for a causal explanation of events and situations", sociological approach to biblical studies became a systematic and sophisticated discipline. Applying social science theories, sociological approach to biblical interpretation identifies a threefold context of the text: "the text within its context," "contexts for the text," and "the context behind the text." The first context, the text within its context, is commonly known as the background of the text. This is the context the text describes or assumes such as *cultural values and codes* (kinship and genealogies, social status, corporate personality, purity and uncleanness, and honor and shame); *social roles* (like those of the priests, prophets, judges and kings); *institutional organisations and ethos* (of the cult and monarchy); *historical process* (the rise of Israel as a cultural entity and nation state); *gender* (that is, the identity and place of women). The second context, the contexts for the text, is the reader and community of interpreters. It is the context in which the text is read and applied. For example, the Latin American liberation theology of hermeneutics of suspicion challenges the ecclesiastical hierarchical structures, pastoral practice, the reading of biblical texts, and the formulation of theology that are perceived to be oppressive and irrelevant for the poor and marginalised people; the African-Americans and black Africans (South Africa) develop a theology of new self-understanding; and a feminist reading of the scripture exposes female oppression then and now. The third context, the context behind the text, is the context of the production of the biblical material, that is, the ideology of the text that would be related to the sociology of literature in tandem with sociological reconstructions (Carroll 2000:14-21). Priest (1999:483) warns that the biblical text must always remain the primary source for sociological approach to the Bible (see also Rogerson 1985; Wilson 1984; Gottwald 1983-1999; Lang 1985; Clements 1989; Carter & Mayes 1996; Matthews & Moyer 1997).

<sup>11</sup> Rhetorical criticism of the biblical text was first introduced in 1968 (published 1969) by James Muilenburg in his presidential address to the Society of Biblical Literature under the title "Form Criticism and Beyond." Muilenburg named the "beyond" rhetorical criticism, that is, applying classical rhetorical rules to analysis/exegesis of biblical texts, which then have developed further and become a time-honoured discipline for the interpretation of the Scriptures. Rhetoric, which is related to oratory, is the art of effective public speaking. It is a classical discipline that dates back to Aristotle's Greco-Roman world. Aristotle developed a practical theory of the discipline that dealt with

(literary, postmodern, and theological criticisms). Robbins' (1996b) five-angle socio-rhetorical approach includes inner texture, intertexture, social and cultural texture, ideological texture, and sacred texture (see definitions of these textures in Chapter Four).

A multidimensional approach rightly recognises that a one-dimensional approach is ethically wrong because a given text includes several different semantic dimensions and thus presents several interpretations as equally legitimate and authoritative (Patte 1995:44). If questions are not asked from different perspectives, multifaceted meanings of a text would never be discovered. Whatever approach one follows, it should also be remembered that a biblical exegete is responsible for the effect of his or her exegetical conclusions and nuances, whether positively or negatively, as one is accountable to one's readers, be it the academic guild, faith communities, or ordinary individual readers.<sup>12</sup> Multidimensional approach wants to be faithful to these. Jonker (1996), Patte (1995), and Robbins (1996b) have made valuable contributions towards this end.

Robbins' (1996b) five-textured socio-rhetorical approach does not attempt to integrate all the five-textures. Each texture is treated independently. Although there are some values in it, in this researcher's opinion, if the five textures are not integrated, the interpretive result could lose the text's coherent message. Therefore, in adapting Robbins' socio-rhetorical interpretation, this

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the relation of rhetoric to philosophy, the role of the audience, and a general discussion of arrangement and style. He distinguished three types of rhetoric: *judicial* (assessment of past circumstances), *epideictic* (instillation and enhancement of particular beliefs or values in the present), and *deliberative* (reckoning of actions that might be expedient or beneficial for the listener's future performance). He also identified three modes of rhetorical strategy or persuasion: *Ethos* (to convince by the confidence on the moral character of the speaker/writer [see Olbricht & Erksson [eds.] 2005 for recent works on this]), *logos* (reasoned argument), and *pathos* (to persuade by emotion). Finally, a rhetorical speech must include five standard parts if it is to be persuasive: *exordium* (introduction), *narratio* (statement of facts), *proposition* (main points to be made), *probatio* (proof) and *peroratio* (conclusion); and rhetorical *topoi* (topics or lines of argument) (cf. Muilenburg 1969; Watson and Hauser 1994; Majercik 1992; Dozeman 1992; Kennedy 1984; Phyllis Tribble 1991; Lisa Kruger 1999). Based on these classical rhetorical rules, Kennedy (1984) outlines a six-stage method of rhetorical interpretation of the scripture: (1) *Determining the rhetorical unit*. This refers to "that part of the text that is sufficient in itself to be the object of rhetorical criticism" (Kruger 1999:15), which has a beginning, a middle, and an end." The term *inclusio* is sometimes used as evidence of opening and closing argumentation (Kennedy 1984:33-34). (2) *Defining rhetorical situation*. This refers to persons, events, objects, and relations the rhetorical interpreter should examine (Kennedy 1984:35). This will "generate pressure for verbal response" (Kruger 1999:15). (3) *Understanding rhetorical problem addressed by the discourse*. This is basically identifying "the *stasis* or specific question at issue and ... to ascertain the kind of judgment that the audience is asked to render" (Kruger 1999:16). This can be either a *judicial*, *deliberative*, or *epideictic* (Kennedy 1984:36, *passim*). (4) *Considering the arrangement of material in the text*. "What subdivisions it falls into, what the persuasive effect of these parts seems to be, and how they work together – or fail to do so – to some unified purpose in meeting the rhetorical situation" (Kennedy 1984:37). (5) *Analyzing argument and style*. This is the analysis of *heuresis* (arguments based on proofs by way of *ethos*, *pathos*, and *logos*) and *style* of discourse (the text's choice of words and their formulations in "figures of speech" and "figures of thought") (Kennedy 1984:37; Kruger 1999:16). (6) *Reviewing of the whole analysis*. This final stage is the evaluation of rhetorical effectiveness.

<sup>12</sup> The decline of Christianity in Europe since the beginning of the nineteenth century coincided with the rise of the Enlightenment ideology and theology. One wonders whether or not the Enlightenment theology that questions absolutism in favour of relativism, could have played a part in the decline of Christianity in Europe.

research will integrate all the five angles. As Doran (1998:585) notes, a *lacuna* in Robbins' method is that in his first texture (inner texture or a close reading of the text). Robbins nowhere asks the reader to be aware of the type of literature one is reading – narrative, legal instructions, poetry, or wisdom literature – in the case of the Old Testament.<sup>13</sup>

Robbins' include social and cultural sub-textures in his second texture (intertexture). They are a little “too cryptic” (Doran 1998:585) and by including it in the second texture, the interpreter who follows his method could confuse it with the third texture (social and cultural texture), although he has given a prior warning that they are not the same. Robbins proposes to look for elements of the deity, the holy person, and ethics in the text in the fifth and last texture. However, his discussion on theological-ethical textures is unsatisfactory. He could have developed a fuller theological-ethical dimension of interpretation. Even if there is no God-talk in a text, it does not mean that there is no theology for that text. Intertextual and contextual studies will surprisingly reveal that most texts indeed contain theological-ethical meanings. As Koptak (1999:123-124) notes, a rhetorical interpretation itself calls for understanding rhetorical functions of a text – the call for transformation of belief, behaviour and attitude – not just rhetorical meanings. Robbins is quite right in stressing that to interpret a text is to interpret its author. This is manifested in his own approach that largely reflects the core values of North American biblical scholarship of methodological diversity, admission of ideology and religious differences (that is, “agree to disagree” notion<sup>14</sup>), and cultural pluralism across time and space, all embraced by the conviction that they are ‘equal terms’ or textures of ‘meaning’ (Braun 1999:383)

Despite the above deficiencies, Robbins' work is a significant contribution towards biblical interpretation. His programmatically articulated interpretive method is a ground-breaking achievement. His work is a master of interdisciplinarity which is theoretically coherent, intellectually deep, formulated in clarity, forceful in rhetoric, and exhibits mastery of catchy taxonomic metaphors (Braun 1999:383). He rightly wants interpreters to be attentive to the biases of writers as well as readers of the text. He is sensitive to the ways in which a given text may be interpreted differently by different people with different methodologies because of different life

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<sup>13</sup> Doran (1998:585) also rightly points out that although Robbins uses the term “form criticism” in the last question of his study guide under the inner texture, nowhere is the question raised of the larger genre into which all the small pieces of texts fit.

<sup>14</sup> This researcher does not agree with the notion of “agree to disagree.” If we agree to disagree and each goes his or her own way, then there is no more room for further dialogues. As interpreters of the Scriptures, we must keep on engaging, exchanging each others views, and learning from one another.

experiences. He has also demonstrated how interpreters bring their ideological presuppositions to the exegetical task (cf. Gladden 1998:318).

Robbins' socio-rhetorical approach is written for and tested with the New Testament. However, it could also be adapted for Old Testament interpretation as well, which this research attempts to do.<sup>15</sup> It should be noted, however, that no methodology for writing Old Testament theology and ethics is flawless (House 1998:57). The one proposed for this research is no exception. In addition, this researcher is not a social scientist, anthropologist, historian, or linguist; but an aspiring theologian. Therefore, this research will need to rely heavily on what experts, mainly Western scholars, have written wherever the research discusses and cites issues of social sciences, anthropology, history, and literature relating to the Old Testament.

In the final analysis, there is a big question that confronts a multidimensional exegete. If there is to be no privileged reading of a text, Robbins as well as Jonker and Patte have not addressed the question of whether or not every reading is to be accepted. In addition, it is not clear who judges a reading as responsible and acceptable or otherwise (Doran 1998:585). Are official doctrines/beliefs of faith communities privileged, exclusive, or one-dimensional reading? This researcher concurs with the view that one of the important elements of a multidimensional interpretation of the Scriptures would be to respect faith communities' privileged reading of the Scriptures.

### **1.4.3 Researcher's individual ideological location and relation to groups as an interpretive methodology**

An interpreter's frame of reference inevitably influences his or her interpretation of the Bible. Sometimes this influence could result in a dangerous ideological phenomenon which appropriation may become detrimental to society (see "ideological and theological texture" in Chapter Four). This then leads to the question: who then has the moral right to interpret the Bible, especially when it comes to its theological-ethical teachings? This question is provoked by Snyman (2002:1) who, ruminating on the post-apartheid South African theological discourses, asks: "Who has the

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<sup>15</sup> Sunim Lee (2002) has recently successfully applied the method for Old Testament interpretation in her doctoral dissertation, "A Socio-Rhetorical Interpretation of Genesis 1-3 from a Korean Female Perspective", at the University of Stellenbosch.

moral right to speak?”<sup>16</sup> Making an unwise generalisation, this researcher too used to ponder, can one trust “Western” theologians’ interpretation of the Bible considering how they had endorsed slavery,<sup>17</sup> colonialism, segregation, apartheid, and female subordination? Even if some theologians might not have enthusiastically supported these systems, they tolerated them and benefited from the systems. A chapel at the centre of the Almina slave trading castle on the Cape coast of Ghana stands as a mockery of Christianity in some quarters of Europe during the eighteenth and nineteenth century CE. It is hard to believe that slavery and segregation were most vigorously practised in the southern part of the United States, the so-called Bible belt. It is harder to believe that segregation was practised there until as recently as the 1960s. Seeing many wonderful Afrikaners and other white Christians in South Africa today, it is hard to believe that they were the same people who advocated, practised, or tolerated apartheid theology until as late as the 1990s.

But then, as a Chinese proverb says, if you point one finger at someone, three fingers will point back at you, this researcher began to realise his own unworthiness and bias, emanating from his own small frame of reference. He too has “tolerated” corruption, injustices, ungodliness, exploitation of the female sex as well as the weak and the poor, etc, in his own community, his own country, the countries where he had worked, and in other parts of the world. This shows that humility is imperative in Bible interpretation, realising that “one could be wrong” in one’s interpretation and application of the Bible.<sup>18</sup>

The above illustrations indicate that a Bible interpreter is inevitably influenced by his or her cultural and theological frame of reference. One’s view of others’ cultures is also influenced by one’s theological or religious tradition, and vice versa. This is not unwarranted because all theologies are contextually conditioned and there is nothing wrong with theology being contextually conditioned (Imasogie 1993:7). Therefore, it goes without saying that this

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<sup>16</sup> There is a movement in South Africa called “The New Reformation” that aims to reform the way people see religion and read the Bible. Botman (2002) seems to be in the opinion that proponents of “The New Reformation” do not have the moral right to speak considering what they have and have not done during the apartheid era

<sup>17</sup> Even as the year 2007 marks the 200<sup>th</sup> anniversary of the British Parliament’s abolition of slave trade on 21st March 1807, we are reminded again that slavery represented two thousand years of Christians’ wrongdoings, that is, Christians condoned and practised slavery for nearly two thousand years. Christians in the past either practised or tolerated slavery because they believed that the Bible does not explicitly prohibit it. But today we know that it was wrong. It is wrong for any human to enslave fellow human beings. This is one example that indicates that just because the Bible does not prohibit, it does not necessarily mean that the system/practice is not harmful or sinful. For example, the Bible does not prohibit the use of tobacco or ecstasy drugs.)

<sup>18</sup> Perhaps, as theologians and biblical scholars from other parts of the world continue to owe a lot to scholars from the West for the latter’s academic and scientific researches, theologians and scholars from the West could also learn from Christians in other parts of the world in areas of Christian faith and ethics.

researcher's individual ideological location and relation to groups would inevitably influence his understanding and interpretation of the text. His presuppositions, whether philosophical or ideological, will ultimately affect the choice of methodology and the interpretation of the pertinent data (cf. Carroll 2000:15). Thus, it is important to introduce this researcher's individual ideological location and relation to groups. In so doing, his individual societal ideological location and relation to groups would be his upbringing in a patriarchal but female-friendly Marâ society (see **Excursus One**), where primogeniture is more of a responsibility than a privilege (see **Excursus Two**). His individual religious ideological location and relation to groups would be his conservative Christian upbringing, his pastoral ministry at an evangelical church, and his missionary services with an international and interdenominational evangelical mission organisation (see **Excursus Three**).

#### **1.4.4 Text and inclusive language**

The Hebrew texts used in this research are from the *Biblia Hebraica Stuttgartensia* from Bible Works Version 6 (2004). The English texts, unless otherwise stated, are from the Holy Bible, New International Version, Copyright ©1973, 1978, 1984 by International Bible Society (used by permission). The research will employ gender inclusive terms. However, when a text or work is quoted or referred to, terms such as “man” or “men,” brother, and “he/his” used either in generic or masculine senses will be quoted or referred to as they are. The following terms are interchangeably used in this research: “Yahweh [hwhy]” and “God [-yh| a],” “Hebrew Bible” and “Old Testament,” “Scripture” and “Bible,” “Hebrew” and “Israelite.”

#### **1.4.5 Structural outline of the research**

This research is divided into five chapters. Chapter One (this introductory chapter) explains the motivation and objective of the research, formulates the research problem, states the hypotheses, and discusses methodological considerations for the research. Chapter Two examines the Ancient Near East context of primogeniture by way of a textual survey and analyses of the Ancient Near East texts relating to primogeniture. Chapter Three critically reviews recent scholarly opinions on primogeniture in the Old Testament. This is important so as to understand what has been written earlier. Chapter Four is a socio-rhetorical interpretation of Deuteronomy 21:15-17, which is considered the primary text of understanding primogeniture in the Old Testament. This is the central focus of the research. Chapter Five draws some conclusions on primogeniture and

patriarchy in Old Testament theology and hermeneutics. It also underlines significant contributions this research makes to Old Testament scholarship and identifies areas for further research. Excurses are provided on topics and issues which warrant further clarification and information.

In many respects the social, economic, political, and religious life of ancient Israel was very close to its contemporary Ancient Near Eastern societies. Therefore, understanding primogeniture in the Ancient Near East will help towards a better understanding of primogeniture in ancient Israel. For this reason, before we engage in the study of primogeniture in ancient Israel, including recent scholarly opinions on the subject, it would be helpful first to study primogeniture in the Ancient Near East. To this we now turn.

## Chapter Two

# A SURVEY OF PRIMOGENITURE IN THE ANCIENT NEAR EAST TEXTS

### 2.1 RATIONALE OF THE STUDY

A survey of primogeniture in the Ancient Near East texts will help towards a better understanding of primogeniture in the Old Testament because of the striking similarities between the Old Testament and the Ancient Near East texts. Although every culture of the Ancient Near East has its own uniqueness, it should be remembered that “individual cultures of the Ancient Near East were not solitary functioning systems, like islands, but subject to mutual influence” (Hennie Marsman 2003:33). Some would call this a “cultural continuum” (Van der Toorn 1996:4). Ancient Israel was no exception. Therefore, it should be expected that Ancient Near East texts and the Old Testament books would share many common social, economic, religious, political, ideological, and gender backgrounds. For this reason, Old Testament interpreters have been using Ancient Near East texts as the contexts for the Old Testament.<sup>1</sup>

However, studying the Ancient Near East texts solely as the contexts of the Bible has not been universally accepted anymore in the light of the fact that Ancient Near East studies has become sophisticated and independent disciplines in recent years.<sup>2</sup> This position is shared even by biblical scholars, although the return of the Ancient Near East literature and texts to the public attention was largely due to its links with the Bible, regardless of the motivations of those who made the linkage – either to validate or invalidate the biblical claims (cf. Sasson 2005:231-232 and literature

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<sup>1</sup> As their titles illustrate, *The Context of Scripture (COS)* and *The Ancient Near East Text relating to the Old Testament (ANET)* take the ANE texts as the context of the Scripture. Arnold & Beyer (2005 [2002]) even go further to the extent of calling the sub-title of their ANE text collections the “primary sources for Old Testament study.”

<sup>2</sup> For arguments against studying the ANE texts solely as the context of Scripture, see the critical reviews of *The Context of Scripture* (cf. *COS* 3, p. xlix): “Herewith we have again come up against the sad topic of whether the texts offered really have anything to do with the biblical world, and whether they serve to illuminate it, if only *per viam negationis*” (Loretz 1996:72; Hallo’s translation). “... I cannot help wondering whether this does not continue to betray the old philosophical presuppositions of *ANET* that the voluminous textual records of the ancient world are ultimately to be assessed according to their utility in elucidating the biblical text, that is, by a criterion outside their own purview” (Wyatt 1998:168). “Can we in good conscience regard the Ancient Near East as primarily ‘the context of Scripture?’ ... it seems a little ethnocentric to describe the Ancient Near East as primarily a context for a different book” (Hendel 1998:16). “... Perhaps it is time to rethink one of the central criteria of selection ... – whether scriptural relevance is a necessary or altogether helpful criterion for inclusion into a volume of Ancient Near Eastern and Egyptian texts.” (Knoppers 2001:88-91).

cited there for examples of different motivations of linking the Ancient Near East texts with the Old Testament).

Ancient Near East studies should continue to thrive and progress as independent and scientific disciplines in their own right. And considering the interest these studies have generated, the Ancient Near East will continue to remain one of the main regions for researches on ancient studies for some generations of scholarship to come. However, that does not negate the function of the Ancient Near East or the Ancient Near East texts as the social-cultural contexts of the Old Testament. As far as Old Testament interpretation is concerned, Ancient Near East texts will continue to illumine Old Testament texts, providing some important background and even missing information. This is true especially of our subject of primogeniture. We do not have adequate information concerning the laws and rights of the firstborn in the Old Testament. Therefore, we need to scrutinise the Ancient Near East texts for some additional information.

A study of primogeniture texts would indicate that most societies of the Ancient Near East practised patriarchy in one form or another. This patriarchal system expressed itself in three different but interrelated dimensions: gender (men above women, husbands above wives, sons above their mothers, sons above daughters), age (parents above children and grandchildren, the firstborn son above his younger brothers, elder ones above younger ones), and social strata (master and his wives, children, brothers and sisters above slaves, biological children above adopted children, children of free woman/wife above children of slave woman/wife or prostitute). Although the above three dimensions of patriarchal familial system were manifested in almost all areas of the Ancient Near East societal life, they seemed to be most clearly the case in rules and practices surrounding marriage and family. Hence, in what follows, we will analyse texts relating to primogeniture as manifested in marriage and family life of the Ancient Near East societies, especially its manifestations in the rules of family inheritance and royal succession. Towards the end, we shall also analyse some exceptions to the rules of primogeniture.

It is true that the texts discovered so far do not reveal the full socioeconomic, religious-political, and gender histories of the Ancient Near East. For this reason, there have been scholarly discussions whether or not one can draw a conclusion based on the available texts. In this researcher's opinion, even if the available texts may not adequately reveal what we wish to know, it is still warranted to draw some conclusions from the available texts, other than arguing from

silence (on this concept, see also Martha Roth 1998:175). A comparison of the civilizations<sup>3</sup> of different regions of the Ancient Near East (see **Excursus Four**; cf. Stern [ed.] 1994; Levy 1995; Finkelstein 1995; Finkelstein and Na'aman [eds.] 1994; Ben-tor [ed.] 1992;) would reveal that Mesopotamia and Egypt were ahead of Palestine in terms of “civilisation”.<sup>4</sup> For this reason of sequence in civilisation, it was natural that Palestine (ancient Israel included) “imitated” civilisations of Mesopotamia and Egypt in many respects, including the collection of its epics, tales (narratives) and laws (we shall return to the Old Testament’s “imitation” or recitation of Ancient Near East texts in Chapter Four).

Lack of space compels us to discuss only representative texts based on the English translations. In so doing, it is important to begin with a brief review of the publication of the Ancient Near East texts and the Ancient Near East law collections in order to understand the *Sitz im Leben* of the primogeniture texts better.

## 2.2 A REVIEW OF SOME PUBLICATIONS ON ANCIENT NEAR EAST TEXTS

Pritchard’s (1969 [1950]) *Ancient Near East Texts Relating to the Old Testament (ANET)*<sup>5</sup> has been the most widely referred authority of the Ancient Near East texts for the English speaking scholarly circles since its publication in 1950. However, since the first publication of the *ANET*

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<sup>3</sup> The term “civilisation” is here used in a stricter and narrower sense of its meaning to refer to a state of human society in terms of physical and organisational development, not in terms of moral and ethical aspects of human society as judged by a modern understanding of these disciplines.

<sup>4</sup> There have been scholarly debates on the chronology and the use of absolute dates for the Ancient Near East history, including the dating of the Ancient Near East texts. The most commonly accepted dating, the so-called “Middle Chronology,” places Hammurabi’s reign from 1792 to 1750 BCE (cf. Snell 2005:xix; Liverani 2005:3-19; Chavalas 2005:34-47; Beaulieu 2005:48-61; Van de Mieroop 2004:4; Roth 1997 [1995]:ix; *COS*). For fuller discussion on the ANE civilization, see Kuhrt (1995). See also Foley (ed.) (2005); Snell (ed.) (2005); Walls (ed.) (2005); Van De Mieroop (2004); Wilcke (2003); Green (2003); Marsman (2003); Averbeck, Chavalas, & Weisberg (eds.) (2003:3-351); Cornelius & Venter (2002); VerSteege (2000); Roth (1998); Westbrook (1998); Von Soden (1994 [1985]); Matthews & Benjamin (1991b); and Saggs (1988 [1962], 1984) for different areas of the civilization of the Ancient Near East.

<sup>5</sup> This unparalleled monumental volume of the English translation of the ANE text collections was followed by its companion volume with pictures, *The Ancient Near East in Pictures Relating to the Old Testament (ANEP)*, published in 1954. Prior to the publication of the *ANET*, there were already quite a number of publications on the ANE texts both by German scholars, such as Schrader (1903 [1870]) (ET), *The Cuneiform Inscriptions and the Old Testament*, Jeremias (1904) (ET), *The Old Testament in the Light of the Ancient East*, Gressmann (1909, 1926-27) (ET), *Ancient Near Eastern Texts and Pictures to the Old Testament*; and English speaking scholars such as Rogers (1926 [1912]), *Cuneiform Parallels to the Old Testament*, Barton (1937 [1916]), *Archaeology and the Bible*, Driver & Miles (eds.), *The Assyrian Laws* (1935), a two-volume *The Babylonian Laws* (1952, 1955); and volumes of Albright’s works (1911-1968; see Wright 1961:363-389 for biographical details of Albright’s works from 1911-1958 and *COS* 1:xxiv for 1958 onwards).

and its second edition (1955), many more texts have been discovered, recovered, reconstructed, edited, translated, and offered new alternative/renderings. The results of these were new publications of collections of the Ancient Near East texts. The two most outstanding publications are the German edition, *Texte aus der Umwelt des Alten Testaments (TUAT 1984)*, edited by O Kaizer and a three-volume English edition, *The Context of Scripture (COS, 1997, 2000, 2002)*<sup>6</sup>, edited by William W Hallo and his associate editor, K Lawson Younger, Jr.

Since the *COS* is the latest publication and is quite representative of almost all the past publications, our textual survey on the Ancient Near East texts relating to primogeniture will, therefore, be based primarily on the *COS*. We will, however, also consult the *ANET* and other Ancient Near East texts<sup>7</sup> for primogeniture materials that are not found in the *COS*. Although we may make a few passing comments here and there on primogeniture in the Old Testament, and in ancient Israel, we will not discuss this aspect in detail in the present chapter, since this will be the core subject from the next chapter onwards. Primogeniture and related texts are represented mostly in terms of law collections, especially the laws from Mesopotamia. Outside law collections, few references to primogeniture are found in marriage contracts, adoption contracts, inheritance court cases, succession stories, and individual tales and stories. Therefore, it is important to first briefly review recent scholarly opinions on the nature and purpose of the Ancient Near East law collections.

### 2.3 A BRIEF REVIEW OF SCHOLARLY OPINIONS ON THE ANCIENT NEAR EAST LAW COLLECTIONS<sup>8</sup>

Legal historians of the nineteenth century (Maine 1986 [1861]; 1890) have noted the following four most salient features of the early laws:<sup>9</sup>

<sup>6</sup> The *COS* was published in three volumes (Vol 1, 1997; Vol 2, 2000; and Vol 3, 2002), abbreviated and referred to as *COS 1*, *COS 2*, *COS 3*. Martha Roth (1997 [1995]) too published *Law Collections from Mesopotamia and Asia Minor*. However, as one of the main contributors to the *COS*, her publications are incorporated into the latter.

<sup>7</sup> A distinction should be made between the terms “*ANET*” and “ANE texts” in this research. The former specifically refers to Pritchard’s *ANET*; the latter is inclusive of the ANE texts in general, which includes *ANET*, *COS*, *TUAT*, etc. The following notations and symbols are used for the translation of the ANE texts: Full square brackets, [ ], for restorations to broken text in the original; half square brackets, [ ̄ ], damaged but likely readings; pointed brackets, < >, modern insertions of text omitted by the ancient scribe; double pointed brackets, « », deletions of text erroneously included by the ancient scribe; ellipses, ..., untranslatable text or a gap; and parentheses, ( ), enclosed material added to the English translation (cf. Roth 1997 [1995]:xiii).

<sup>8</sup> This research chooses to employ the terms “law collections” instead of “law codes” to refer to the Mesopotamian texts on laws “because the word ‘code’ suggests a comprehensive treatment of law – something that the Mesopotamian collections clearly are not” (VerSteege 2000:13; see also Roth 1997 [1995]).

- (a) Law exists between families, clans or tribes; not between individuals.
- (b) Redress for individual wrongs took the form of feud between the groups to which the culprit and victim belonged.
- (c) The courts acted as arbitrators between such groups, seeking to find a just settlement but without power to enforce their judgments.
- (d) Liability was strict, with no consideration of the culprit's intentions (so-called *Erfolgshaftung*) (see also Westbrook 1994:20 for further discussion).

Although the Ancient Near East law collections contain elements of the above features of early laws, to the surprise of modern legal scholars there were already well-developed and sophisticated laws as early as five thousand years ago. Westbrook (1994:20-21) discovers that the third millennium BCE Sumero-Akkadian cuneiform records reveal a highly organised legal system, whose courts had full coercive power and where individuals had the capacity to make contracts, including sophisticated laws, such as concerning the significance of intention in determining liability. The Sumero-Akkadian civilisation that produced this cuneiform legal system spread throughout Western Asia. Its influence was already attested at Ebla in Syria in the third millennium. Legal documents drafted in Akkadian from Alalakh and Hazor indicate that not merely the writing, but the legal culture itself, was established in Syro-Palestine by the early second millennium (Wiseman 1953; Hallo & Tadmor 1977:1-11).

However, as one appreciates these Ancient Near East law collections, there have been scholarly debates concerning the nature and purpose of their collections – were these laws and statutes intended to be applied to given situations; were they statements of abstract principles; were they summaries of actual decisions; or were they something else? (VerSteege 2000:15). Some scholars (see below) have concluded that the Ancient Near East law collections had little or no impact on the daily operation of legal affairs; they were not intended to be used as precedent for an actual case, but meant to guide kings and judges and used as textbooks in scribal schools.

Roth (1997 [1995]:5) asserts that in numerous studies of a range of legal situations, little correspondence has been found between the provisions in the law collections and contemporary practice and that no court document or contract made a direct reference to any of the formal law

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<sup>9</sup> Prior to the innovation of written laws, every society cherished its own sets of its societal norms and regulations. Some norms are inter-societal ones, that is, norms common among many societies, while others are indigenous and local in nature and scope. Some parts of these early traditions of a society would well qualify to be classified as laws in today's understanding of this discipline. Laws of some societies are simpler, while others are more sophisticated.

collections, which indicates that these law collections were not the sole evidence of the law from the Ancient Near East. In the same vein, Saggs (1988 [1962]: 188-189), based on lack of the claim in the prologue and epilogue, concludes that the Laws of Hammurabi did not constitute a complete system of law; part of these laws dealt with political and military achievements of Hammurabi; they were matters relating to particular cases, incorporating principles that the king had applied in certain actual cases which were recorded as specimen decisions for future comparable cases.

On his part, Westbrook (1985:249) suggests that the laws in Mesopotamia were “royal *apologia*”; they were not laws in a strict sense according to the modern understanding of this discipline. The primary purpose of these laws was to lay posterity and future kings before the public; and above all, they served as evidence of the gods’ approval of the king’s execution of his divinely ordained mandate as “the Faithful Shepherd.”<sup>10</sup> Boecker (1976:77) classifies the Laws of Hammurabi as a reform, since the law collections are based on predecessors. Different traditions were altered and standardised to give a uniform law to the kingdom created by Hammurabi’s political and military activity.

The above arguments are interesting. However, one should not also completely rule out the possibility of the application of these laws in the royal or temple courts as binding legislation for actual cases. The prologue and epilogue of the Laws of Hammurabi (cf. *COS* 2.131, pp. 337, 351-352), the most extensive collection of the Ancient Near East laws, seem to suggest that the laws were both to be enforced in actual cases as binding legislation, as well as to be used as a guide for future kings and judges in what served as precedents before in similar cases:

When the god Marduk commanded me to provide just ways for the people of the land (in order to attain appropriate behaviour, I *establish truth* and *justice* as the *declaration* of the land, I enhanced the well-being of the people (prologue to the Laws of Hammurabi, *COS* 2.131, lines v. 14-25, p. 337; researcher’s emphases). May any *wronged man* who has a case come before the statue of me, the king of justice, and may he have my inscribed stela read aloud to him, thus may he hear my precious pronouncements and may my stela reveal the case for him; may he examine his case, may he calm his (troubled) heart, (and may he praise me) (epilogue to the Laws of Hammurabi, *COS* 2.131, parts of lines xlvi.1-8, pp. 351-352; researcher’s emphases).

Roth (1997:10-11; see also VerSteeg 2000:17) interestingly argues that the wronged man in the epilogue is someone who has already lost a case – not one who is about to enter into a lawsuit. But the text warrants more than one possible interpretation. There is no convincing reason to reject the

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<sup>10</sup> On this, see also VerSteeg (2000:13-18; and works cited there, including among others, Greengus 1995; Driver & Miles 1952; Lafont 1994, Good 1967; Roth 1997, 1997 [1995]; Finkelstein 1961).

“wronged man” here as the one who has been wronged and so encouraged to submit a lawsuit against his perpetrator in order that justice may prevail in the land. In the concluding sections of his epilogue, Hammurabi also implored the future kings to follow and implement his just laws.<sup>11</sup>

A trace of the possible application of the laws in actual cases is also attested in an Old Babylonian letter. The letter in question, sent by an administrator to one of the team leaders in response to a complaint he received about unreasonable demands made by some weavers, refers to a “stela” (Akkadian *nari*) upon which wages were inscribed. The reference was probably the clauses §§273-274 of the Laws of Hammurabi (COS 2.131), where daily wages for several categories of workmen were established.<sup>12</sup>

Like modern law codes, the laws of the Ancient Near East covered society, economy, religion, politics, ideology, and gender dealing with the daily life of individuals and society including personal life, the family (marriage, bride-price, dowry, etc), gender and sexuality, property, inheritance and succession, agriculture, land, irrigation, animal husbandry, social stratification (free men and women, slaves, peasants, ruling/upper class). Other areas covered by law collections include prostitution, crime, torts, trade (including contracts and business laws), labour, forced labour (for royal building activities – temples, cities, walls, canals, etc), nomadism, migration, war, cult, deity and divine rulers.

Laws relating to primogeniture mostly emanated from the second millennium Mesopotamian laws of Lipit-Ishtar, Eshnuna, Hammurabi, Middle Assyria Laws, Hittite Laws, and the first millennium New Babylonian laws. Law collections have not been found in Palestine (Canaan). Similarly, Egypt also preserves very little legal material although Egyptian narrative texts have been

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<sup>11</sup> Part of the concluding sections of the epilogue of the Laws of Hammurabi read: “May any king who will appear in the land in the future, at any time, observe the pronouncements of justice that I inscribed upon my stela. May he not alter the judgments that I rendered and the verdicts that I gave, nor remove my engraved image. If that man has discernment, and is capable of providing just ways for his land, may he heed the pronouncements I have inscribed upon my stela, may that stela reveal for him the traditions, the proper conduct, the judgments of the land that I judged, the decisions of the land that I rendered, and may he, too, provide just ways for all humankind in his care. May he render their judgments, may he give their verdicts, may he eradicate the wicked and the evil from his land, may he enhance the well-being of his people” (COS 2.131, parts of lines xlvi.1-8, p. 352).

<sup>12</sup> The letter, A 3529, a collection of the Oriental Institute, belongs to a small archive and can be dated about the tenth year of Samsuiluna, the immediate successor of King Hammurabi (thus to ca. 1740 BCE). The archive probably comes from Kish, less than six kilometres east of the dynastic capital in Babylon (Roth 1997 [1995]:6, n.1). The letter in part reads (researcher’s emphasis): “Concerning the woven-textile workers... the wages for a hired worker are recorded on the *stela*. In accordance with what they spoke to you, either in grain or in silver, do not withhold their wages. And when I come there, I will investigate the matter personally and I will deduct their wages from their work assignment.”

discovered in their abundance. This could be because Pharaohs were venerated as semi-divine in Egypt. As such, they gave divine decrees and did not need laws to approve them before the gods or to validate their performances as kings – which was the function of such laws in Mesopotamia (Arnold & Beyer 2002:104). The prologues and epilogues of the law collections from Mesopotamia invoked the names of the gods as the “givers” or originators of the laws and made the kings as partners or agents in revealing these just laws to the populace.<sup>13</sup> On top of King Hammurabi’s stela, he is portrayed as receiving the laws from Shamash, the sun god (cf. Réunion des Musées Nationaux/Art Resource, New York). This is similar to Yahweh as the author/giver of the “laws” in the Pentateuch.

Above we have briefly reviewed the publication of the Ancient Near East texts and scholarly opinions on the nature and purpose of the Ancient Near East law collections. Our next task in the present chapter is to briefly study marriage and family life in the Ancient Near East as the *Sitz Im Leben* of primogeniture custom. This then will be followed by the analysis of the Ancient Near East texts relating to primogeniture. In so doing, we will thematically identify and analyse the texts according to regions (Mesopotamia, Egypt and Syro-Palestine) and periods/chronology (third millennium, second millennium, and first millennium BCE). We will then work out some conclusions for each of the themes and attempt to draw a synchronised conclusion for the whole chapter.

## **2.4 MARRIAGE AND FAMILY IN ANCIENT NEAR EAST<sup>14</sup>**

A verse of the Sumerian Hymn to Gula that portrays the stages of a woman’s life, vividly illustrates the patriarchal family culture of the Ancient Near East: “I am daughter, I am bride, I am spouse, I am housekeeper” (Stol 1995:486-487). A similar list could be created for the man: “I am son, I am bridegroom, I am husband, I am head of household” (Matthews 2003a:7). From this hymn, it can be deduced that marriage and establishment of a family were two most important aims and desires of the Ancient Near East men and women. Although we do not know the exact social structure of the Ancient Near East, whether matriarchal/matrilineal, patriarchal/patrilineal,

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<sup>13</sup> Cf. *COS* 2.153: lines 1-86 for the Laws of Ur-Namma; *COS* 2.154: lines 1-37, xxi.5-17 for the Laws of Lipit-Ishtar; *COS* 2.130: lines i.1-7 for the Laws of Eshnuna; *COS* 2.131: lines v.14-25, xlvii.9-18, etc for the Laws of Hammurabi.

<sup>14</sup> These studies are based primarily on Mesopotamian texts. We do not have explicit Egyptian texts on marriage and family. Egyptian custom of marriage and family is largely the same with that of the Mesopotamian, except for differences in terminology; therefore, a study of marriage and family in Mesopotamia would also largely represent marriage and family in Egypt (Snell 1997:108ff.).

or fratriarchal, “the weight of evidence indicates that male dominance was the rule and that patriarchal lineage and inheritance systems were the norm in both Egypt and Mesopotamia” (Matthews 2003a:1). The family generally consisted of three to four generations – father, son, grandson, great grandson, including unmarried brothers, sisters, aunts, widowed mothers, orphaned nephews and nieces and other relatives (Nemet-Nejat 1998:127).

Some of the indications of the patriarchal culture of the Ancient Near East include: patrilocal system of marriage, including a daughter leaving her father’s god and worshipping her husband’s god (cf. Gen 24:50-60); the head of the family, whether the father or the eldest son, having complete charge of family properties, representing the family in court, being responsible for maintaining its property and credibility within the community (Van der Toorn 1996:21); passing down of the family inheritance to sons (daughters excluded), with the firstborn as the prime heir (except certain cases from Nuzi, Alalakh, and Ugarit); and protection of father’s/husband’s honour and dignity – no child is allowed to publicly humiliate his/her father. The LH §195 says: “If a child should strike his father, they shall cut off his hand” (Roth 1997 [1995]:120); and a one-sided application of adultery rule on the wife – the wife had to submit to the River Ordeal “for the sake of her husband’s honour” [LH §132]); (Matthews 2003a:1-3 and literature cited there).

In sum, almost all the Ancient Near East societies by and large practised patriarchy, with the firstborn son as the prime heir. However, the practical application of the rule of primogeniture was often complicated owing to the practice of polygamy, divorce, marriage to a woman of lower social status (slaves), and sibling rivalries (see **Excursus Five** for a further analysis of “Marriage and Family in the Ancient Near East”). Above we have briefly discussed marriage and family in the Ancient Near East. We shall now engage with our task of the present chapter, that is, a textual survey of the custom of primogeniture, particularly in the areas of family inheritance and royal succession.

## **2.5 PRIMOGENITURE IN FAMILY INHERITANCE**

### **2.5.1 Introductory observations**

The clearest signpost that indicates the prevalence of the patriarchal culture in the Ancient Near East was the exclusion of daughters from inheritance and succession. A daughter could not inherit, and so she could neither succeed her father as the head of the family nor be considered a successor

to the royal throne. Queen mothers exercised tremendous power and influence over their son-kings and over the affairs of the kingdom. However, as soon as they were in power, ancient women seemed to have replicated the patriarchal ideology and power (Lerner 1986:240ff). Within the system of inheritance by sons only, the firstborn son was accorded prerogatives in inheritance. Indeed, in many cases, he was the prime heir to the entire estate.

## 2.5.2 Inheritance in Mesopotamia

Although there were a few cases outside Mesopotamia where inheritance could be distributed according to the will (*šīmtu*) of the deceased father (Greengus 1995:469, 478; VerSteege 2000:106), inheritance in Mesopotamia was controlled largely by the operation of laws for the obvious reason that the successive kingdoms had fully operative laws and legal systems, including laws and legal procedures that governed inheritance (cf. Stol 1995: 485, 494; Driver & Miles 1952:343; VerSteege 2000:106). Beginning with the third millennium Laws of Ur-Namma and Lipit-Ishtar through the second millennium Laws of Hammurabi, Eshnuna, Middle Assyrian to the first millennium New Babylonian Laws, Mesopotamia witnessed a long and well-established legal history. Laws concerning inheritance were found in all these major law collections, as well as other legal texts such as court cases, adoption and marriage contracts.

### 2.5.2.1 The Laws of Ur-Namma<sup>15</sup> (ca. 2112-2095 BCE) on inheritance

There is no explicit law concerning primogeniture in the third millennium law collections of Ur-Namma. The closest possible trace of a law on inheritance is LU §5 (*COS* 2.153) which reads:

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<sup>15</sup> *Background of the Laws of Ur-Namma*: The literary style of the prologue makes it difficult to ascertain the royal sponsor of these laws. However, the scholarly pendulum seems to swing in favour of King Ur-Namma who reigned from 2112-2095 BCE (Ur III dynasty), although some still maintain that it was his son Shulgi (2094-2047 BCE) who had the composition drafted. With the Sumerian revival in the latter part of the third millennium BCE, the Akkadian dynasty of Sargon the Great and later the Gutian invaders from the east were finally expelled from the Sumerian city-states by King Utu-hegal of Uruk (biblical Erech). Utu-hegal was succeeded by his brother Ur-Namma, Governor of Ur, who immediately assumed leadership throughout the region. He conquered Lagash, the seat of Gudea's Second Dynasty, and assumed the royal epithet "King of Sumer and Akkad" (i.e., of all Lower Mesopotamia) and founded the Ur III Dynasty. Ur-Namma's untimely death at a battle with the Gutians was survived by his (peacetime) temple and civic buildings, canal system, and royal patronage of the arts and literature as well as a long and moving funeral lament commissioned by his widow Watartum, the mother of his son and successor Shulgi. Sumerian died out as a living language by the Old Babylonian period, the time during which the surviving copies of this composition were made. The composition is known from three manuscripts from Nippur and Ur. Only a prologue of about 170 lines and thirty-seven laws are preserved. The prologue of the Laws of Ur-Namma combines a third-person introductory section laudatory of the named Ur-Namma with a series of first-person boasts of the (possibly unnamed) king's accomplishments (cf. Roth 2000a:408-409 and works cited there).

If a male slave marries a native woman, he/she shall place one male child in the service of his master; the child who is placed in the service of his master, his paternal estate, ... the wall, the house, [...]; a child of the native woman will not be owned by the master, he will be pressed into slavery.

If the Laws of Ur-Namma as we have it today are the only law collections of the Ur III Dynasty (which would hardly be the case), it could be that the exponents of these Laws did not see any need to stipulate the contemporary traditions/practices that were universally accepted. The scenario in the present clause could be one of the unusual occurrences that needed some guidance, as normally a native free woman would not marry a slave man. The text does not specify the birth position of “one male child.” So he could be the firstborn son or any of the slave’s sons. The precise sense of the second clause is uncertain. Probably it deals with the inheritance rights of the master’s estate by a child of his slave who is placed in his service (Roth 1997 [1995]: 21). However, it is not clear what kind of service “the child who is placed in the service of his master” really renders. It could either refer to the child who performs some service obligation of the state on behalf of his master or the child who serves his slave-father’s master at the master’s house, farms, etc. Since it is related to the master’s inheritance and the condition is stipulated that the mother of the child has to be a native (free) woman (the possibility of her being the master’s daughter itself is not ruled out). The former is probably the case, as a slave would serve his master anyway regardless of whether he inherits from him or not. Despite the dreaded slavery system of the times, a law that entitles a slave-workman to receive a share from his master’s estate is indeed a “good and gracious law.”

### 2.5.2.2 A Sumerian court case on inheritance<sup>16</sup>

Ur-Suena son of Enlil-mashsu and Anne-babdu his brother by mutual agreement divided (their inheritance) by lot. After Ur-Suena died – 10 years having passed – Anne-babdu confronted the assembly of Nippur, appeared (in court) and declared: “One-third pound (20 shekels) of silver, the price of 2 slave-girls, Ur-Suena my older brother ... gave to me!” Aabba-kalla son of Ur-Suena appeared (in court) and declared: “His heart was satisfied at that time with that money!” The judges remanded Aabba-kalla to the gate of Ninurta for taking an oath. By the gate of Ninurta each man was made to go towards (accommodate) the other. By mutual agreement Aabba-kalla gave 4(?) shekels of silver to Anne-babdu. 8 rods of orchard within the field of ... in lieu of the respective inheritance shares not yet adjudicated according to the wish (lit. heart) of Mullil-mashsu, Aabba-kalla and his two brothers, the heirs of Ur-Suena, gave to Anne-babdu. Anne-babdu swore in the name of the king that he would henceforth not raise a claim against the heirs of Ur-Suena for the anointing priest of Ninlil and its prebend field, or the office of “elder” or the office of gate-opener(?), house, field, orchard, slave-girl, male

<sup>16</sup> The *COS* places this text under a third millennium Sumerian archival collection. From the reference to the assembly of Nippur, the text is probably dated the latter part of the third millennium BCE.

slave, or any (other) property of the patrimony whatsoever on the basis of an old document regarding the inheritance share of Aabba-kalla (*COS* 3.141, lines 1-37).

The above third millennium court case was between the younger brother and the sons of his late older brother. The case was brought to the assembly of Nippur, the ancient religious capital of Sumer and Akkad. It was a case whereby the younger brother, Anne-babdu, who laid claims for additional shares from his nephew Aabba-kalla, the son and heir of his late older brother Ur-Suena. The claim was made ten years after the death of the elder brother. The basis of the claim is that, when Ur-Suena was still alive, he and his younger brother, Anne-babdu, divided up the estate of their father, Enlil-mashsu, by lot. Anne-babdu demanded additional share. His nephew, Aabba-kalla, responded that his uncle, Anne-babdu, was satisfied at the time when he and his brother divided up the estate by lot.

Although the text does not specify that the older brother Ur-Suena is the firstborn, since he is the elder brother of the only two heirs mentioned, he would indeed be the firstborn. Based on the division of the land by lot and from the claim of an additional share by the younger brother ten years later, it is possible that Ur-Suena, the elder brother, was probably given a substantial additional share in lieu of him being the principal heir. Based on the last phrase, “in lieu of the respective inheritance shares not yet adjudicated according to the wish, (literarily, heart) of Mullil-mashsu (Enlil-mashsu),” it could also be that Anne-babdu received less than what he was entitled or his father wished him. From the phrase, “the heirs of Ur-Suena,” it would also appear that Aabba-kalla and his two brothers have not yet divided their late father Ur-Suena’s (Anne-babdu’s brother) estate. They probably kept it as a joint property administered by Aabba-kalla, who was probably the eldest brother.

Why did Anne-babdu wait for ten years after the death of the elder brother to bring the lawsuit against his nephews? The text does not provide any convincing explanation. He may have purposefully waited until his elder brother’s death in order to avoid fresh firsthand evidence against him. Or it could also be either because his own estate had decreased by that time or simply out of respect for the dead – he did not want to bring his late elder brother’s memory back so soon. The royal court was apparently convinced by Anne-babdu’s claim probably on the ground that part of the estate of Aabba-kalla and his two brothers were indeed a joint property of their father Ur-Suena and their uncle Anne-babdu. So Aabba-kalla and his two brothers agreed to give their uncle (their father’s brother) silver and land as prescribed by the court.

Based on the last part of the judgment, “for the anointing priest of Ninlil and its prebend field, or the office of 'elder' or the office of gate-opener(?), house, field, orchard, slave-girl, male slave, or any (other) property of the patrimony whatsoever on the basis of an old document regarding the inheritance share of Aabba-kalla”, it is possible to deduce that the rights of holding the family (clan) priestly position, the firstborn office, the office of gate-opener (whatever that would mean), and inheriting the prime patrilineal estates were passed down from the firstborn to firstborn. This court case indeed provides a strong case for primogeniture. Therefore, we could conclude that primogeniture was a known tradition as early as the third millennium Sumerian periods.<sup>17</sup>

### 2.5.2.3 Certain cases on the division of inheritance

There are traces of division of the inheritance in Mesopotamia according to some ratio during the early dynastic period through Farâ (from ca. 27<sup>th</sup> century BCE) and Old Sumerian (from ca. 2500 BCE) to Sargonic periods (from ca. 2340 BCE to the middle of 22<sup>nd</sup> century). In early dynastic and Farâ periods, one case refers to the division of a total area of 45 bûr<sup>18</sup> coming from four people, three of them listed for 15 bur each and the fourth 10 (a total area should have been rather 55 bûr). In other two cases, a total of 10 bûr were broken down into two groups of 3+2 bur (with a summation of the first group as 5 bûr) and a total of 28 bûr were divided into three groups, one of 14 bûr (the summation of 9+5 bûr), one of 1[2] bûr (the sum of 5+4+ 137) and one of 2 bûr. In Farâ period two or more people usually received the sale proceeds of field or house (cf. Wilcke 2003:68-69 and texts and literature cited there). These examples clearly show that one or two heirs received superior inheritances.

From Farâ to Old Sumerian periods, several cases of dissolved communities of heirs are observed. There is a case in which the unmarried members of the family had to contribute labour. At the death of the head of the family, the responsibility for the family was passed on perhaps to the surviving eldest brother (Wilcke 2003:70-71 and texts and literature cited there). Although information on inheritance during the periods in question are only indirect, this is another trace, though dimly, of the prerogatives and responsibilities accorded to one of the brothers, whoever that brother may be – the firstborn son or the favoured son – from as early as the third millennium BCE.

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<sup>17</sup> This inheritance case is a reminiscent of the story of a man in the crowd who urged to Jesus in the New Testament: “Teacher, tell my brother to divide the inheritance with me” (Lk 12:15).

<sup>18</sup> ‘Bûr’ is a type of Mesopotamian land measurement.

#### 2.5.2.4 The Laws of Lipit-Ishtar<sup>19</sup> (1934-1924 BCE) on inheritance

By the turn of the second millennium, inheritance laws were explicitly attested in the Ancient Near East texts. However, it is not clear whether equal division of inheritance among all the sons or primogeniture was the norm in the laws of Lipit-Ishtar, as there are traces of both systems. The following were some of the laws of Lipit-Ishtar on inheritance:

LL §24 (COS 2.154):

If the second wife whom he marries bears him a child, the dowry which she brought from her paternal home shall belong only to her children; the children of the first-ranking wife and the children of the second wife shall divide the property of their father equally.

This law stipulated that the dowry the wife brought from her father would be inherited only by her own children (step-children are excluded). One interesting and significant provision about this clause is that the law does not stipulate the prerogatives of the firstborn, the superiority of sons above daughters, or preference of the children of the first-ranking wife over that of the second (ranking) wife. All the children, both sons and daughters (gender), the firstborn and his younger brothers (age), and children of the first-ranking wife and second (ranking) wife (social strata) are put on equal footing for inheritance. They would divide their father's estate equally.

LL §25 (COS 2.154):

If a man marries a wife and she bears him a child and the child lives, and a slave woman also bears a child to her master, the father shall free the slave woman and her children; the children of the slave woman will not divide the estate with the children of the master.

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<sup>19</sup> *Background of the Laws of Lipit-Ishtar*: As the title suggests, the royal sponsor of this law collection was King Lipit-Ishtar of Isin. Roth (2000b:410-411) places the reign of Lipit-Ishtar at the beginning of the second millennium (1934-1924 BCE). However, Lipit-Ishtar's cultural-historical periods belong to the latter part of the third millennium Sumerian periods. Driver & Miles (1955: 306) ascribes the regnal years of King Lipit-Ishtar, king of Isin, from ca. 2217-2207 BCE. With the demise of Ur III dynasty under Ibbi-Sin in the face of the Elamite invaders from the east and Amorite incursions from the west, Ishbi-Erra of Mari, one of the governors of Ibbi-Sin, founded his own dynasty at Isin (modern Ishan Bahriyat), south of Nippur, and ruled from 2017-1985 BCE. In the tradition of Ur III rulers, Isin Kings too assumed the royal epithet "King of Sumer and Akkad." However, Isin was not without a rival. The cities of Isin and Larsa both claimed and counterclaimed to be the heir to the Ur III legacy for the next two hundred years known as the Isin-Larsa Period until the region was unified under Hammurabi, an Old Babylonian king. Towards the end of the reign of Lipit-Ishtar, the fifth king of the First Dynasty of Isin, King Gungunum, his rival Larsa king, captured Ur which paved the way for Gungunum's eventual conquer of Isin. The fall of Isin was mournfully commemorated in the established Sumerian lament tradition. Before the demise of Isin, King Lipit-Ishtar sponsored the collections of the Laws of Lipit-Ishtar whose scribes follow the literary and cultural traditions of the Ur III rulers, including the traditions of royal self-praise and of commitment to the establishment and administration of justice in the land. More than fifteen manuscripts, almost all from Nippur, the scribal centre, preserve parts of the Sumerian composition. Fragments of one or more stone stela suggest a monumental display and publication of the work. Almost all the prologue and epilogue of the laws are preserved along with almost fifty provisions, although many are still fragmentary and gaps remain (cf. Roth 2000b:410-411; see also Roth 1997 [1995]:22-35 for texts on the Laws of Lipit-Ishtar and *ANET* 159-161 and works cited there; *TUAT* 1:23-31; and Roth 1997 [1995]:22-35 for translations and studies).

This law deals with social strata dimension of patriarchy. Children who were born out of union with a slave woman would not be equal heirs with the children of the free-woman-wife.<sup>20</sup> From this clause, we could deduce that the second wife of the preceding clause is a free-woman-wife, not a slave-wife. The highest gift the children of the slave woman could receive is that both they and their slave-mother would be freed. Still, to be a landless freeman (no inheritance land) is far better and higher in status than to be a slave. That must be the reason Lipit-Ishtar believed that it was a just law even if they were denied inheritance. The Laws of Hammurabi (see below) later made provisions for the children of the slave woman becoming legal heirs by their father declaring them “my children.”

LL §26 (*COS 2.154*):

If his first-ranking wife dies and after his wife’s death he marries the slave woman (who had borne him children), the child of his first-ranking wife shall be his (primary) heir; the child whom the slave woman bore to her master is considered equal to a native free-born son and they shall make good his (share of the) estate.

This law deals with both social strata and age dimensions of the patriarchal familial culture. This law and the clauses §70 and §71 of the Laws of Hammurabi (*COS 2.131*) are very similar, except that in the latter the man had a union with his slave woman after his first-ranking wife died. In the preceding clause of the Laws of Lipit-Ishtar (cf. *COS 2.154*: LL §25), there is no provision for inheritance of the paternal estate by the children of the slave woman. But both in the Laws of Hammurabi (*COS 2.131*: LH §70) and the present clause of Lipit-Ishtar (*COS 2.154*: LL §26), children born out of union with slave women could inherit the paternal estate. In order for children born out of union with a slave woman to inherit, their father had to make them “his children” in the case of the Laws of Hammurabi. There is no such requirement in the Laws of Lipit-Ishtar.

A possible scenario in the Laws of Lipit-Ishtar is that, since the man takes his slave woman after the death of his first-ranking wife, the slave woman is now a *de facto* wife. Therefore, her children could have a share in their paternal estate. But their mother could not become the first-ranking wife because of her social background, which means none of them could be made the principal heir. There also seems to be a gradual progression in the Laws of Lipit-Ishtar from §25 to §26. In the former, a man only had a wife and a slave union. In the latter, he had a first-ranking wife. This creates room for the possible presence of a free woman who was a second-ranking wife. In other words, the man in question had three categories of wives – a first-ranking wife, second-ranking

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<sup>20</sup> This law is reminiscent of the biblical Ishmael-Isaac narrative in Genesis 16:1; 21:8.

wife/wives, and a slave wife. In such a case, in addition to the children of a slave woman becoming free, they would be in equal terms with the children of the second-ranking wife (a native free-born son) and so would have some share in the inheritance. The child of the first-ranking wife is presented as the principal heir. However, the text does not specify who among the children of the first-ranking wife would be the primary heir in case the first-ranking wife had more than one child. Since the principal heir in question is referred to in a singular form “child”, he could be either the only son of the first-ranking wife or her firstborn son. This is a trace of primogeniture in the Laws of Lipit-Ishtar.

LL §27 (*COS 2.154*):

If a man’s wife does not bear him a child but a prostitute from the street does bear him a child, he shall provide grain, oil, and clothing rations for the prostitute and the child whom the prostitute bore him shall be his heir; as long as his wife is alive, the prostitute will not reside in the house with his first-ranking wife.

This law clearly stipulates that one’s own child (possibly either son or daughter), not brothers or nearest kinsmen, would be the legal heir, even if that child was born out of wedlock. The text does not speculate who the principal heir would be in the case of a man who had more than one child born out of wedlock. It could be either way; that they divide the estate equally or devise an equal division with some prerogatives for the eldest child/son. The last phrase, “as long as his wife is alive, the prostitute will not reside in the house with his first-ranking wife” is a clear manifestation of the social strata dimension of patriarchy.

LL §31 (*COS 2.154*):

If a father during his lifetime gives his favoured son a gift for which he writes a sealed document, after the father has died the heirs shall divide the (remaining) paternal estate; they will not contest the share which was allotted, they will not repudiate their father’s word.

This law relates to a special gift to the favoured son. The text here does not specify who the favoured son is. From the social and cultural perspective of the times, it is most likely that the favoured son was the first-born son. There is clearly a prerogative accorded to a son in the above clause although the text is not explicit about who the favourite son is. Whether or not this is an evidence of primogeniture is subject to other confirmation. The favoured son could be a son of the favourite wife or any favoured son among many other sons. If the favoured son is other than the firstborn son, this is a trace of the violability of the primogeniture tradition. This and other texts that deal with the issue of “the favoured son/child” do not speculate as to what makes a particular son a favoured son. If the favoured son is the firstborn, his birth order as the first son of the father

and all the mythical, cultic, and cultural significance associated with the firstborn (see below) would be the natural reason for favouring the firstborn son.

However, if the favoured son is other than the firstborn son, the status of the son's mother or the character, wisdom, strength, and bravery of the son in question could possibly influence the choice. At any rate, other sons may not challenge their father's decision in giving a special gift to his favoured son, even if the favoured son may be other than the firstborn son. The *ANET*'s (160d) translation of the second last phrase, "(but) the inheritance of the estate they shall not divide," is a pointer to either the inheritance of the prime estate by the favoured son who was made the principal heir or the favoured son acting as administrator for the undivided estate.

LL §32 (*COS* 2.154):

If a father, during his lifetime, designates the bridewealth<sup>21</sup> for his eldest son, and he (the son) marries while the father is still alive, after the father has died the heirs [shall ...] the estate [...] from the paternal estate [...] the bridewealth they shall [...] the bridewealth [...].

This law deals with an exclusive designation of the *terhatum* ('bridewealth' or bride price) for the eldest son. Although the incompleteness in the last part makes the text unintelligible, from the flow of the first part one could sense a kind of exclusive privilege that the firstborn enjoyed. A specific mention of "the bridewealth for his eldest son" here could point to the practice of primogeniture, that is, the preferential treatment of the firstborn in other familial affairs. In this particular case, although the father designated a sum of 'bridewealth' for his eldest son, it would appear that the father was still alive at the time of his eldest son's marriage, and so the bride-price of the eldest son's wife would have been paid for by the father himself. In that case, the whole or part of the designated bride-price was probably not spent.

Having established the prerogatives of the eldest son, the latter part of this particular text, however, could read either way – the heirs could divide the estate but not the 'bridewealth' which was given to the eldest son; the heirs could divide both the estate and the 'bridewealth' which was

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<sup>21</sup> The *COS* renders *terhatum* as "bridewealth", which is a marriage contract payment transacted by the groom's father/family to the bride's father/family. Elsewhere it is also called bride-price. Thus the terms, "bridewealth" and "bride-price" are interchangeably used in this research, especially in the present chapter. Other related terms include *šeriktum* (dowries) promised by the father of the bride and given to her upon leaving her father's house and *nudunnū* (marriage settlement/gift) given to the bride by her husband or father-in-law.

given to the eldest son which was not spent for its original purpose; or the heirs could neither divide the estate nor the ‘bridewealth’; they have to preserve them as a common property.<sup>22</sup>

### 2.5.2.5 The Laws of Eshnuna<sup>23</sup> (ca. 1770 BCE) on inheritance

There is only one inheritance clause in the Laws of Eshnuna. The LE §16 (*COS* 2.130) stipulates that “the son of a man who has not yet received his inheritance share or a slave will not be advanced credit”. The law collections of Eshnuna are the earliest extant example of the Akkadian-language collections of laws (Roth 2000c:332). Thus, cultural-historically these law collections belong to the Akkadian periods between the latter part of the third millennium and early second millennium BCE. The Laws of Eshnuna do not contain primogeniture clauses or any reference to inheritance as such. The reason for this could be that, if we take the Laws of Hammurabi as earlier than the Laws of Eshnuna, and since both the Laws of Lipit-Ishtar and Hammurabi had elaborately dealt with the inheritance laws, the scribes of Eshnuna did not find it necessary to repeat what has been already known and practised in the region. There are clauses in the Laws of Eshnuna that deal with ‘bridewealth’ and dowries, which we shall discuss below under “Inheritance by daughters and wives in the Ancient Near East.”

This law assumes the common understanding of the contemporary inheritance law. The inheritance here refers to land, which the debtor would use as a surety which would then be taken by the creditor if the former fails to repay the loan. Since the son of a man who has not yet received his share of inheritance would not have a property to put as surety for credit, the law prohibits that such a person be given credit.

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<sup>22</sup> The prerogatives of the firstborn son in the designation of bride-price from the father’s wealth were also attested in the traditional Marā society.

<sup>23</sup> *Background of the Laws of Eshnuna*: The royal sponsor of this law collection could either be King Naram-Sin of Eshnuna or his successor Dadusha, to whom the fragmentary superscription refers (little else is known about this king). However scholarly opinions seem to weigh in favour of Naram-Sin, who became the king of the city of Eshnuna, the northern Mesopotamian city (east of Babylon), which fell under the sway of the Amorite settlers in the region after the fall of the Ur III Dynasty. Under Naram-Sin, Eshnuna became a great military power at the end of the nineteenth and the beginning of the eighteenth centuries BCE, “alternatively warring and allying with the other great powers of the time, Assur (or Kingdom of Upper Mesopotamia), Mari, Elam, and Babylon” (Roth 2000c:332). During the reign of Ibal-pi-el II (1766 BCE), the successor of Dadusha, King Hammurabi’s conquest of the city and the Kingdom of Eshnuna came to an end. The texts (three school exercise texts) do not preserve the prologue or epilogue. The composition of this law collection stands within the scribal-legal tradition of the Laws of Ur-Namma, Lipit-Ishtar, and Hammurabi (cf. Roth 2000c:332) (see also Roth 1997 [1995]:57-70 for texts on the Laws of Eshnuna and *ANET* 161-163 and works cited there; *TUAT* 32-38; Finkelstein 1970; and Roth 1988; 1990; 1997[1995]:57-70 for translations and studies).

### 2.5.2.6 The Laws of Hammurabi<sup>24</sup> (ca. 1792-1750 BEC) on inheritance

Extensive law collections on primogeniture originate from the middle and second parts of the second millennium Mesopotamian in both Babylonian and Assyrian periods. The periods in question cherished the great rulers like Hammurabi (Babylon) and Tiglath-pileasar (Assyrian) with relative peace and prosperity, for the kings had conquered “all” they needed to conquer. Their attention could now be turned to domestic affairs of building projects, history writing, and promulgation and compilation of laws, etc. As noted above, the Laws of Hammurabi constituted the most extensive law collections upon which successive law collections could be built. Boecker (1976:114) asserts that the principle of primogeniture was foreign to the Laws of Hammurabi. But the following texts will indicate that, even if primogeniture was not promulgated as a law, the prerogatives of the firstborn son were widely attested in the Laws of Hammurabi.

LH §§ 28; 29; 36 (COS 2.131):

If there is either a soldier or a fisherman who is taken captive while serving in a royal fortress, and his son is able to perform the service obligation, the field and orchard shall be given to him and he shall perform his father’s service obligation (LH §28). If his son is too young and is unable to perform his father’s service obligation, one third of the field and orchard shall be given to his mother, and his mother shall raise him (LH §29). The field, orchard, or house of a soldier, a fisherman, or a state tenant will not be sold (LH §36).

The use of singular “son” here naturally would refer to the firstborn son in the case of a man having more than one son, as he would be the first to reach the adult age to be able to render the

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<sup>24</sup> *Background of the Laws of Hammurabi*: The royal sponsor of this law collection was Hammurabi (ca. 1792-1750 BCE), the sixth ruler of the Babylonian Amorite dynasty founded by Sumu-abum (ca. 1894-1881 BCE) during the time Isin and Larsa were competing to control the south. For the first one hundred years of the Babylonian Kingdom, Sumu-abum and his successors largely focused on the immediate geographical area, engaging in local political and military consolidation, fortification and temple building projects, canal maintenance, and some military actions. By the same Hammurabi became king, he found himself hemmed in by the rising powers of Larsa to the south, the Kingdom of Upper Mesopotamia to the north, Mari to the west, and Eshnuna and Elam to the east. By his thirty-second regnal year, Hammurabi had decisively defeated all these rivals and assumed the royal epithet “King of Sumer and Akkad.” Hammurabi now had the luxury of turning his attention again to domestic affairs in the tradition of his predecessors. It was at this point that his law collection was compiled and inscribed on the monumental stelae as well as publicised in multiple copies that were placed in major cities of his realm, fulfilling his repeated claims of a just and righteous rule. Although the Laws of Hammurabi are by far the longest, most polished, and most comprehensive one which could compare with other law collections, it was written in the tradition of its predecessors, the Laws of Ur-Namma and Lipit-Ishtar. With the death of Hammurabi, the empire he consolidated began to fall and by the beginning of the sixteenth century, the much reduced city of Babylon fell to invading Hatti forces. A 3,5 metre tall stela with the most complete edition of the Laws stood as a testimony to the greatness of Hammurabi. Five hundred years later, the conquering Elamites took the stela from Sippar to Susa as the spoils of war. In addition to this famous monument, there are some fifty manuscripts that record all or part of the laws, prologue, and epilogue. Covering the period of Hammurabi’s to the middle of the first millennium, the manuscripts came from different sites. They were scribal school copies whose scribes also engaged in exercises which resulted in commentaries to and extracts from the Laws. There is even one Sumerian-Akkadian bilingual document (Roth 2000d:335-336; see also Driver & Miles 1952, 1955; Roth 1997 [1995]:71-142 for texts and *ANET* 163-180; *TUAT* 1:39-79; Roth 1997 [1995]:71-142 and Boecker 1976:67-133 for translations and studies).

service obligations of the state. Clause §29 allots one-third of the estate to the mother in the case of the absence of the principal adult heir-son in order that the mother would raise this heir. The Law does not specify who receives the other two-thirds of the inheritance. It could be that it is kept in the custody of the paternal uncles until the son-heir reaches the adult age. No specific reason is given for the prohibition of the sale of the field, orchard, or house of a soldier, a fisherman, or a state tenant in §36. It could be in order to protect the patrilineal family estate from dividing into pieces which would result in aliens coming into their midst.<sup>25</sup>

LH §135 (*COS 2.131*):

If a man should be captured and there are not sufficient provisions in his house, before his return his wife enters another's house and bears children, and afterwards her husband returns and gets back to his city, that woman shall return to her first husband; the children shall inherit from their father.

The law does not provide a conditional clause. However, this inheritance law was promulgated probably on the condition that the returned captured first husband wishes to take his wife back or the wife herself wishes to go back to her first husband, which would result in the woman having children from two different men. In such a case, the law stipulates that her children would inherit from their respective biological fathers.

LH §158 (*COS 2.31*):

If a man, after his father's death, should be discovered in the lap of his (the father's) principal wife who had borne children, that man shall be disinherited from the paternal estate.

The principal wife here is not the mother of the son in question. She is his stepmother, the mother of his half-brothers. In a polygamous family, some of the wives of a father could be the same age or even much younger than some of his sons. For this reason, sexual attraction and union between a stepson and his stepmother, the prohibited fruit, seemed to be a common phenomenon in the Ancient Near East, which resulted in the promulgation of such a law.<sup>26</sup> Such a union would be regarded as a grave offence if it occurs during the father's lifetime. However, after the death of his father, a son was allowed to marry/take one or more of his stepmothers, but not his father's principal wife who already had children of her own. If the principal wife does not have children, she too is an eligible wife of a stepson. The present case is not that of a son taking his late father's

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<sup>25</sup> This is reminiscent of the inalienability of family land in the Old Testament which we shall discuss in the following chapters.

<sup>26</sup> For this reason, in some polygamous societies in Africa (e.g., Sudan) the social norm prohibits close interaction between daughters-in-law and their father-in-law or stepfathers-in-law; between sons-in-law and their mother-in-law or stepmothers-in-law.

principal wife (the mother of his half-brothers and sisters) as his wife; it is a sexual union between the two. A son, either the firstborn son or any other son, who committed such a grave offence, would have no inheritance or share in his father's estate.<sup>27</sup> Other provisions for the disinheritance of a son on the ground of grave offence are discussed below (§§168 & 169).

LH §165 (*COS* 2.131):

If a man awards by sealed contract a field, orchard, or house to his favourite heir, when the brothers divide the estate after the father goes to his fate, he (the favourite son) shall take the gift which the father gave to him and apart from that gift they shall equally divide the property of the paternal estate.

This law refers to a man who has a favourite or principal heir. The *ANET* (173b) translates "his favourite heir" as "his firstborn who is the favourite in his eye." Even if we analyse the text based on the rendering of the *COS*, normally the favourite heir would be the firstborn son. In addition to his shares (probably the prime estate), the favourite heir would also obtain a share from the equal division of other properties of the paternal estate. Even if the favourite heir in question is not the firstborn son, the presence of a system which recognises a favourite heir or principal heir is indicative of the existence of primogeniture, at least as an office.

LH §166 (*COS* 2.131):

If a man provides wives for his eligible sons but does not provide a wife for his youngest son, when the brothers divide the estate after the father goes to his fate, they shall establish the silver value of the bridewealth for their young unmarried brother from the property of the paternal estate, in addition to his inheritance share, and thereby enable him to obtain a wife.

This clause does not contain a trace of ultimogeniture. The law stipulates fairness among the brothers. The father would have had provided bride-prices for his older sons. So, if he died before his youngest son's marriage, the older brothers would pay the bride-price for their youngest brother's wife. They must not abandon him and let him pay his wife's bride-price from his own inheritance share.

LH §167 (*COS* 2.131):

If a man marries a wife and she bears him children, and later that woman goes to her fate, and after her death he marries another woman and she bears children, after which the father then goes to his fate, the children will not divide the estate according to the mothers; they shall take the dowries of their respective mothers and then equally divide the property of the paternal estate.

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<sup>27</sup> This particular law sounds like a carbon copy of the biblical Reuben's case in Genesis 35:22; 49:3-4 and 1 Chronicles 5:1, except that the biblical Reuben's father Jacob was still alive when Reuben slept with his step-mother.

This law prohibits preferential treatment of any son because of his mother. No preference would be given to the sons of the man's favoured wife. The law is not about the preferential treatment of the firstborn; nor does it necessarily support the absence of the tradition of primogeniture in Hammurabi's Babylon. It could be about equal division of the remaining estate excluding a special portion reserved for the firstborn or favoured heir. All the children, regardless of their mothers, would divide their father's estate equally.

LH §§168, 169 (*COS 2.131*):

If a man should decide to disinherit his son and declares to the judges, "I will disinherit my son," the judges shall investigate his case and if the son is not guilty of a grave offence deserving the penalty of disinheritance, the father may not disinherit his son (LH §168). If he should be guilty of a grave offence deserving the penalty of disinheritance by his father, they shall pardon him for his first one; if he should commit a grave offence a second time, the father may disinherit his son (LH §169).

These laws stipulate that a father does not have the right to disinherit any of his sons except in the case of repeated grave offences. Even for such repeated grave offences, the judges shall first investigate, verify, and approve the disinheritance proposal.<sup>28</sup> The Akkadian Elam text (Brin 1994:255 and literature cited there) includes a son's failure to respect the mother as a grave offence that would result in the disinheritance of that son. This is understandable since succession in Elam was transmitted through the mother as shown below.

LH §§170, 171 (*COS 2.131*):

If a man's first-ranking wife bears him children and his slave woman bears him children, and the father during his lifetime then declares to (or: concerning) the children whom the slave woman bore to him, "My children," and he reckons them with the children of the first-ranking wife – after the father goes to his fate, the children of the first-ranking wife and the children of the slave woman shall equally divide the property of the paternal estate; the preferred heir is a son of the first-ranking wife, he shall select and take a share first (LH §170). But if the father during his lifetime should not declare to (or: concerning) the children whom the slave woman bore to him, "My children," after the father goes to his fate, the children of the slave woman will not divide the property of the paternal estate with the children of the first-ranking wife. The release of the slave woman and of her children shall be secured; the children of the first-ranking wife will not make claims of slavery against the children of the slave woman. The first-ranking wife shall take her dowry and the marriage settlement which her husband awarded to her in writing and she shall continue to reside in her husband's dwelling; as long as she is alive she shall enjoy the use of it, but she may not sell it; her own estate shall belong (as inheritance) only to her own children (LH §171).

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<sup>28</sup> The biblical "law" of Deuteronomy 21:18-21 goes even further to stipulate a capital punishment (by stoning) for such a rebellious son.

To declare “my children” is the process of making illegitimate children legitimate ones.<sup>29</sup> The text is not explicit whether there are additional rites or procedures to follow other than the father simply declaring his illegitimate sons, “my children.” The “first ranking wife” here refers to the man’s wife (a free woman) in contradistinction to his slave-wife (auxiliary wife), which again denotes the social strata dimension of patriarchy. If legitimated, the children of a slave woman would have equal inheritance rights with the children of the first-ranking wife, except that none of the former could become the preferred/principal heir. If the father has not legitimated his children born of his union with a slave by declaring them “my children”, they would not have the right of inheritance of their paternal estate. Illegitimate children are excluded from inheritance.<sup>30</sup> However, they shall not remain slaves of their half brothers. They shall become free men and women.

If a man has two or more wives of free women, the criteria for making one of the wives the first-ranking wife is not clear. She would probably be the wife whom the man married first.<sup>31</sup> From the text, it is clear that the man would choose a son of the first ranking wife as his preferred/principal heir.<sup>32</sup> However, the text does not specify the birth position of the preferred heir in case the first-ranking wife had more than one son. Normally, the principal heir would be the firstborn. But he could also be the favoured son other than the firstborn son. The principal heir would select and take a share first and divide the remaining equally with his other brothers. This is a clear trace of primogeniture. Even if the preferred heir was a favoured son other than the biological firstborn, the firstborn (primogeniture) as an office was intact; one of the sons had to occupy this office. The last part of §171 prohibits the sale of the family estate to outsiders. This could be a trace of the inalienability of the family land.

LH §177 (COS 2.131):

If a widow whose children are still young should decide to enter another’s house, she will not enter without (the prior approval of) the judges. When she enters another’s house, the judges shall investigate the estate of

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<sup>29</sup> In the Marâ culture, the father (or his brothers if the father is dead) would pay the *okia* bride-price to the son’s maternal grandfather (or maternal uncle if grandfather is no more alive) to make him the legitimate son.

<sup>30</sup> In the Hebrew Bible, at the instigation of Sarah, the principal wife, Abraham had to send away (divorce) Hagar, his slave-wife, so that Ishmael would become an illegitimate child who would have no claim over any inheritance, either as the firstborn or one of the sons (Gen 16:5-6; 21:1-14; Marsman 2003:451-452; Wenham 1994:82-83; Hamilton 1995:79-80).

<sup>31</sup> The first ranking wife in the ANE is equivalent of the Marâ principal wife. For the Marâ society, the principal wife is normally the wife from a royal or high clan. In ancient Israel, it seems all the wives (of free women) were equal. Stratification seems to apply only between wives and concubines.

<sup>32</sup> This ANE inheritance law is very similar to the inheritance law of the traditional Marâ society. In the latter, only the children of the principal wife were entitled to inherit. The prime estates or succession would go either to the firstborn or lastborn son depending on the regions.

her former husband, and they shall entrust the estate of her former husband to her latter husband and to that woman, and they shall have them record a tablet (inventorying the estate). They shall safeguard the estate and they shall raise the young children; they will not sell the household goods. Any buyer who buys the household goods of the children of a widow shall forfeit his silver; the property shall revert to its owner.

As custodians, the stepfather of the children and their mother may cultivate the land that belongs to the biological father of the children, who is the woman's late husband. But they are prohibited from selling it. Nor could the land become the property of the stepfather. These children in question would not have inheritance shares in their stepfather's estate unless they were adopted by the latter. Therefore, the law strongly protected their own inheritance (their biological father's estate) for them.

LH §§190, 191 (*COS* 2.131):

If a man should not reckon the young child whom he took and raised in adoption as equal with his children, that rearing shall return to his father's house (LH §190). If a man establishes his household (by reckoning as equal with future children) the young child whom he took and raised in adoption, but afterwards he has children (of his own) and then decides to disinherit the rearing, that child will not depart empty-handed; the father who raised him shall give him a one-third share of his property as his inheritance and he shall depart; he will not give him any property from field, orchard, or house (LH §191).

This law deals with the inheritance by an adopted child (social strata dimension of patriarchy). An adopted son may inherit. But if his adopted father does not choose him to be his prime heir or one of his heirs, there is no law against such a decision of the adopted father. However, if the man first reckoned his adopted son as his heir and changed his mind later when he got his own children, when the adopted son goes back to his own father's house or establish his own house, his adopted father would give him a one-third of one inheritance share from his movable properties. He may not be given a field, orchard, or house (dwelling place), since patrilineal estate may not go to outsiders.<sup>33</sup>

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<sup>33</sup> See also the Mari adoption text discussed below and the *ANET* 219-220 for additional laws concerning sale and real adoptions.

### 2.5.2.7 Middle Assyrian Laws<sup>34</sup> (11<sup>th</sup> century BCE) on inheritance

MAL Tablet B §1 (*ANET* 185b):

[If brothers divide the estate of their father... the orchards and wells on] the land, [he oldest son] shall choose (and) take two portions [as his share] and then his brothers one after the other shall choose (and) take (theirs). The youngest son shall divide up any cultivated land along with all the (produce of their) labours; the oldest son shall choose (and) take one portion and then cast lots with his brothers for his second portion.

By the time of the Middle Assyrian periods, the preferred or favourite heir in the previous laws is explicitly identified as the eldest son who would receive two portions of inheritance. This is the most explicit law of primogeniture. The Akkadian literature used the fixed term *elātu* (Sumerian SIB.TA) for the extra portion the firstborn received in inheritance, and this superior portion accorded to the firstborn in inheritance was attested in several other documents such as Nuzi, Larsa, and Mari as shown in the clauses below (cf. Brin 1994:238-241 and literature and texts cited there). For example, a certain person received a house as a regular part of his inheritance, plus another property as his additional *elātu* (portion) (OECT 8 16.2). The *elātu* here could refer to the prime estate that was not normally divided up.

There has been some speculation on the measurement of two portions – does it refer to two-thirds of all of the estate, a double portion, half of the estate, an extra ten percent, or twice each brother's share? Except for biblical reference of two-thirds (Zech 13:8), there is no direct reference to a two-third concept in the Ancient Near East texts. A document from Nippur (Brin 1994:246 and literature cited there) mentions the firstborn as receiving a portion equal to that taken by the four other brothers. Some texts from Nippur speak of extra ten percent (Brin 1994:245 and literature cited there). Even if there was such a division, they seemed to be more of the *ad hoc* arrangements other than regular customary practices. The last option, two portions for the eldest son, would appear to be the most consistent practice. If there were only two brothers, the estate would be divided into three portions. The elder brother would receive two portions while the younger brother received one portion. In the case of three or more brothers, the estate would be divided

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<sup>34</sup> *Background of the Middle Assyrian Laws*: Copies of the eleventh-century BCE cuneiform Middle Assyrian Laws, excavated in the Assyrian capital of Assur, probably date to the fourteenth century originals, as the language is the Middle Assyrian dialect. The eleventh-century copies were probably compiled during the reign of the powerful king, Tiglath-pileser I (ca. 1114-1076 BCE), who conquered the Hittites in Anatolia, the Egyptians in the Mediterranean coastal areas, and the Kassites in southern Mesopotamia (where new kingdoms arose following the end of the Old Babylonian dynasty of Hammurabi). The laws were arranged thematically, each tablet containing a well-defined theme. A duplicate manuscript which dates the New-Assyrian period suggests that the composition retained value at least in the scribal curriculum (cf. Roth 2000e:353-354; see also Driver & Miles 1935; Roth 1997 [1995]:153-194 for texts on the Middle Assyrian Laws and *ANET* 180-188 and works cited there; *TUAT* 1:80-92; and Roth 1997 [1995]:153-194 for translations and studies).

into the number of brothers plus an additional portion for the firstborn (cf. Brin 1994:245-249 and literature cited there). By virtue of the family office or title being given to the firstborn son, he would inherit the prime estate, the additional portion (*elâtu*). The one portion of the cultivated field the MAL above accorded to the oldest son (“the oldest son shall choose [and] take one portion”) could well be this very additional *elâtu*, the prime estate.

The position of the youngest son is not clear – whether he was the arbitrator for dividing the cultivated lands or he was given some priority to inherit the cultivated land. If it is the former, the reason for giving him this responsibility could be for maintaining impartiality. If it is the latter, it could be a good gesture on the part of the older brothers towards their youngest brother. This will help their youngest brother who may not have reached an age to be able to clear the land for cultivation.

MAL Tablet B §2 (*ANET* 185c):

If one among brothers who have not divided (the inheritance) took a life, they shall give him up to the next-of-kin; if he chooses, the next-of-kin may put him to death, or if he chooses, he may be willing to settle [and] take his share.

This and the following two laws deal with an undivided estate in which brothers keep their father’s estate as an undivided joint property. Some properties were indivisible. When property of such indivisible nature was included, the person who took it had to compensate the other parties to the division for any excess value. Sometimes such a piece of property was exempted from the division and remained the joint property of the family (Driver & Miles 1952:334).

In this particular case, since the brothers have not divided their family inheritance, neither the murderer-brother nor any of his own brothers would have owned a property when the crime was committed. The text assumes that the murderer’s brothers do not want to divide up their undivided estate even in such dire situation, even if to divide it up would result in their murderer-brother being able to ransom himself from his own share of inheritance. Thus “the next-of-kin,” the closest kinsman, who owns property, stands as the only hope for his murderer-kinsman. If the next-of-kin is willing to ransom his murderer-kinsman, then the former would take the latter’s share when the brothers divide up their joint estate. The phrase, “the next-of-kin may put him to death,” may mean if the next-of-kin does not want to save his kinsman-murderer’s life by paying the blood/head money for him, the murderer would face the *talion* judgment, as the next-of-kin who had properties and remained the only hope of saving the murderer-brother’s life, would not

come to his rescue. Judging from the brothers' unwillingness to part with a portion of their joint estate, one could sense how highly important land was in their culture, even above brotherhood and family bond.

MAL Tablet B §3 (*ANET* 185c):

If one among brothers who have not divided (the inheritance) uttered treason or ran away, the king (shall deal) with his share as he thinks fit.

It will make better sense if the phrase reads “uttered treason *and* run away” other than “uttered treason *or* run away.” However, to run away from one's king and city-state would also mean running away from the service obligation of his city-state. In this sense, it could also amount to treason. In case of such treason, the king would deal with the share of convicted brother's undivided inheritance as he thinks fit. There was no provision for the brothers to redeem their brother who was convicted of treason.

MAL Tablet B §§ 4 & 5 (*ANET* 185c):

[If], when brothers are in (joint occupation of) an undivided field, one brother among them...sowed seed...cultivated the field (but) another [brother] has come forward (and) [taken the grain] of his brother's tillage [for] the second time, when they have prosecuted him (and) convicted him, [the brother who] cultivated [the field] shall take [his share] as soon as the former comes forward (MAL B §4). [If, when brothers are in (joint occupation of) an un] divided [field], [one brother among] them dug up [the field with spades]... and ... has come forward (MAL B §5).

The above two laws deal with problems facing brothers in the cultivation and harvest of their undivided land. If a brother steals some grain from the other brother, he may be forgiven for the first time offence. There is some kind of penalty if he repeats this and is convicted of the offence. However, the text becomes unintelligible as to what should be done to him. It could be either the brother from whose field the grain has been stolen would take the first harvest from the brother who stole it or in an extreme case, it could also mean that the former shall take some part of the latter's share when they divide up the property.

MAL Tablet A §28 (*COS* 2.132):

If a widow should enter a man's house and she is carrying her dead husband's surviving son with her (in her womb), he grows up in the house of the man who married her but no tablet of his adoption is written, he will not take an inheritance share from the estate of the one who raised him, and he will not be responsible for its debts; he shall take an inheritance share from the estate of his begetter in accordance with his portion.

It is not clear whether had a tablet of adoption by his stepfather been written, would this son be entitled to receive two shares of inheritances – one from his biological father’s estate and the other from his adopted stepfather’s estate – or would he forfeit his share of inheritance from his biological father’s estate? If a stepson was not adopted as a son, he would not be responsible for his stepfather’s debts because he is not his heir apparent.<sup>35</sup>

*ANET* 185c-186a: Tablet B 6:

“... Before he acquires the field [and] house by purchase, he shall have the herald make proclamation within the city of Ashur (if the property is there) three times during one full month (or) he shall have (him) make proclamation three times within the city of the field and house that he is about to acquire, saying ‘I am about to acquire by [purchase] the field and house of so-and-so, the son of so-and-so, in the precincts of this city; let those who have a claim to possession produce their deeds, lay (them) before the registrars, set forth their claim, show a clear title, and take (the property). Those who have produced their deeds for me during this one full month, while there is still time without forgetting it, (and) have placed (them) before the registrars – (such) person is secured to the extent of his field (and) shall take (it)’ ... He who has not produced his deed during this one full month (and) laid (it) before the registrars lost title to the field and house; they are free to him who had the herald make proclamation” ...

This Middle Assyrian Law on the sale of property stipulates procedures concerning the sale of properties. Although the prime family estates inherited by the firstborn son or the chosen favoured son would not be normally sold to outsiders, from the law of this property deed it is clear that one could sell one’s property in the Middle Assyrian Kingdom. However, by following rigorous procedures and making thorough proclamations, the rightful owner of the property is protected from some unscrupulous individuals, even from his own brothers and next-of-kin.

### 2.5.2.8 New Babylonian Laws<sup>36</sup> on inheritance

NBL §8 (*COS* 2.133):

A man gives his daughter in marriage to a member of the *amēlu*-class, and the father (of the groom) commits certain properties in his tablet and awards them to his son, and the father-in-law commits the dowry of his

<sup>35</sup> This Middle Assyrian law is very similar to the traditional Marā inheritance custom. The heir inherits the estate as well as the debts.

<sup>36</sup> *Background of the New Babylonian Laws*: The Assyrian rule that began some five hundred years after the fall of the Old Babylonian dynasty of Hammurabi lasted another 500 years until it was conquered by the combined forces of Media and Babylon which ushered in the beginning of the New Babylonian dynasty (ca. 635-539 BCE). Nabopolassar (ca. 625-605 BCE) and Nebuchadnezzar II (ca. 604-562 BCE), the first emperors of the New Babylon, “consciously emulated the postures, rhetoric, and activities of the Hammurabi dynasty in order to establish their dynasty as legitimate linear successor to the great empires of the past” (Roth 2000f:360; see also Driver & Miles 1955:324-347; Roth 1997 [1995]:143-149 for text on the Neo-Babylonian Laws and *ANET* 197-198 and works cited there; *TUAT* 1:92-95; Roth 1997 [1995]:143-149 for translations and studies).

daughter, and they write the tablets in mutual agreement – they will not alter the commitments or their respective tablets. The father will not make any reduction to the properties as written in the tablet to his son's benefit which he showed to his in-law. Even should the father, whose wife fate carries away, then marry a second wife and should she then bear him sons, the sons of the second woman shall take one-third of the balance of his estate.

The scenario in this law seems one that involves marriage between a higher class groom (the New Babylonian *amēlu* is the equivalent of the Old Babylon *awīlu*) and a lower class bride. The father of the groom gave the couple properties, probably in terms of their marriage settlement. The father of the bride gave the couple gifts (in terms of his daughter's dowry) as well. Both of the transactions were written in tablets which meant they were unalterable. In the event of the groom's father taking a second wife because of his wife's (the groom's mother's) death, the groom in question here, that is, the elder brother, would remain as the heir apparent of the paternal prime estate. His half brother(s), the sons of his father's second wife, would receive a third of the balance of the estate. It is not clear what the clause means by "a third of the balance of the estate." It could be that the elder brother (the groom) would receive two-thirds and the half (younger) brothers divide the remaining one-third. If this is so, this law represents a strong case for the practice of primogeniture in the New Babylonian period, with the firstborn, the prime heir, receiving two-thirds of his father's estate.

### **2.5.3 Inheritance in Egypt**

The Egyptian myth of the goddess Geb depicts the prerogatives of the firstborn son in inheritance. The goddess divided Egypt equally between Hur, the firstborn, and Setti. But afterwards she regretted this and gave the whole of Egypt to Hur, the firstborn (*ANET*, p. 4). Like in Mesopotamia, the firstborn son or the oldest surviving son was the principal heir in the ancient Egypt receiving a larger share than the other sons. In the case of the undivided estate, the firstborn (eldest) son was normally the administrator on behalf of the joint heirs (cf. Pestman 1961; 1969; Marsman 2003:262). Section five of the Hermopolis codex from Egypt (third century BCE) states that the portion of the firstborn was to be "the customary portion." This indicates the fixed nature of the share of the firstborn. Hermopolis codex §5 further elaborates how the firstborn received twice as much as an ordinary son, while the latter received twice as much as a daughter. The firstborn also received the shares in the estate of those brothers who predeceased their father or who died before the division of the estate without leaving any offspring (cf. Brin 1994:239, 246-247).

The following text of a second millennium Egyptian tale of two brothers represents primogeniture as a familial responsibility:

It is said, there were two brothers, of the same mother and the same father. Anubis was the name of the elder, and Bata the name of the younger. As for Anubis, he had a house and a wife; and his young brother was with him as if he were a son. He was the one who made clothes for him, and he went behind his cattle to the fields. He was the one who did the plowing, and he harvested for him. He was the one who did for him all kinds of labour in the fields. Indeed, his young brother was an excellent man. There was none like him in the whole land, for a god's strength was in him (*COS* 1.40: line 1.1; Papyrus D'Orbiney 10183).

This is an introduction of a long tale written in a beautiful hand on a papyrus (Papyrus D'Orbiney 10183) by the scribe Ennana who lived at the end of the 19<sup>th</sup> Dynasty (16<sup>th</sup> century BCE). The two protagonist-brothers had some connection with a myth of the two gods, Anubis and Bata that was told as a tradition of the Upper Egyptian Cushite Dynasty. In the introduction, the younger brother was described as “as if he were a son” to his older brother. It also evaluated the younger brother positively by making him a strong, hard working and faithful man. The younger brother rejected his sister-in-law's (older brother's wife's) sexual advances by saying,

Look, you are like a mother to me; and your husband is like a father to me. He who is older than I has raised me. What is this great wrong you said to me? Do not say it to me again! But I will not tell it to anyone. I will not let it come from my mouth to any man.<sup>37</sup>

This story illustrates how the firstborn (and elder brothers) immediately shouldered the responsibilities of providing for and bringing up their younger brothers and sisters when their father (and mother) died prematurely or became incapacitated.<sup>38</sup>

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<sup>37</sup> This story is reminiscent of the biblical narrative of Joseph and Potiphar's wife. After this incident, in the same way Joseph left his cloak and ran away, the younger brother picked up his load and went off to the field. Exactly the same as what Potiphar's wife did, the older brother's wife turned the tables on the younger brother as if he were the one who tried to forcefully sleep with her. Warned by the lead cow of the herds, the younger brother escaped the wrath of (being killed by) his older brother. The younger brother braved a crocodile infested river and told his side of story from the other side of the river to his older brother who was chasing after him. Convinced, his older brother returned home and killed his wife. Beginning with a lead cow talking, from this point onwards the story turned mythical.

<sup>38</sup> In the Babylonian theodicy of dialogue between the sufferer and his friend (*COS* 1.154:492b), the pitiful situation of the youngest son whose father died when he was the youngest and whose mother had “departed to the land of no return” seemed to have been compounded by the aloofness of his older brothers who did not surround him with concern and care. Primogeniture, or patriarchy, as a responsibility is also well attested in the Marâ society.

## 2.5.4 Inheritance in Syro-Palestine

### 2.5.4.1 Alalakh marriage contract (15<sup>th</sup> century BCE)

If Naidu<sup>39</sup> does not give birth to a son (then) the daughter of his brother Iwashshura (i.e., his niece) shall be given (to Irihalpa as a wife); if ... (another wife) of Irihalpa gives birth to a son first and after that Naidu gives birth to a son, the son of Naidu alone shall be the first-born (Wiseman 1953, *The Alalakh Tablets* No. 92; Mendelsohn 1959:38; *ANET* 185b; *COS* 3.101B).

This marriage contract was concluded between Irihalpa and the Woman Naidu. As the firstborn son Irihalpa had a privileged position in the family – entitled to a double share in the inheritance<sup>40</sup> and possibly the carrier of the family name and custodian of the prime patrilineal land. Primogeniture gradually developed into an office/institution. As an office, it was not always the biological firstborn who would occupy the office of the firstborn. Thus Mendelsohn (1959:38) rightly asserts that the father's right to disregard the biological firstborn in favour of his younger brother to hold the office of the firstborn in the family which was attested in Nuzi<sup>41</sup> (Gadd 1926, No. 12; Speiser 1928-29), Ugarit (Thureau-Dangin 1937:249f.; Gordon, *Ugaritic Manual*, Texts 49:I, 15-17; 128:III, 16) and Palestine (Gen 48:13-20; 49:3-5; 48:22; 1 Chr 5:1-2) is now attested in Alalakh as well.

### 2.5.4.2 Mari<sup>42</sup> adoption contract (15<sup>th</sup> century BCE)

(If) Hillalum and Alitum should acquire (by adoption) many more sons, Iahatti-II alone (is principal) heir, from the estate of Hilllum, his father, two (shares) he shall take. His younger brothers shall divide (the

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<sup>39</sup> This name sounds like an Indian family name Naidu, spelled Naidoo in South Africa. This would make an interesting semantic research.

<sup>40</sup> In *The Assyrian Laws*, Tablet B, para 1 (Driver & Miles eds.) the law makes a distinction between uncultivated and cultivated land. From the former the eldest brother chooses and takes two portions outright; from the latter he chooses and takes one portion first and then receives another share by lot (cf. Mendelsohn 1959:39). For a double share in other regions, see also Nuzi (Gadd 1926, Nos. 5 & 6), Palestine (Gen 38:28; 48:22; 49:3; Deut 21:15-17; 1 Chr 5:1-2).

<sup>41</sup> Nuzi marriage contracts usually stipulates when a man could have a second wife, most commonly if the first wife does not produce a child/son. It also stipulates certain laws concerning inheritance. Should the first wife produce children/sons after the second wife had given birth to children/sons, prime inheritance usually went to the children of the first wife even if they were younger than the children of the second wife (cf. Marsman 2003:126-127; Paradise 1987:28-29).

<sup>42</sup> Mari, modern Tell Hariri on the middle Euphrates, is one of the principal sources of information on life in upper Mesopotamia during ca. 1750 BCE, the heyday of the Amorites (*COS* 1.94, p. 296). Although Mari is located in southern Mesopotamia, cultural-historically it belonged to western ANE (Syro-Palestine) because of the city's location and its ancient role as intermediary between southern Mesopotamia and Syria. Its archives also shed abundant light on affairs in the west. A vast area in the modern-day Syria and its surroundings with numerous states fell into the orbit of Mari's representatives (Van De Mierop 2004:96).

remainder of the inheritance), brother like brother (i.e., in equal shares) (Boyer 1958, *Texts juridiques et administratifs*, ARM VIII, No. 1; Mendelsohn 1959:38).

This contract describes that Hillalum and his wife Alitum did not have a son of their own. They only had adopted sons. Iahatti-II was the first adopted one. The contract stipulates that the principle of primogeniture had to be followed, even for adopted sons. The first adopted son, Iahatti-II, would occupy the family office/title and so would receive two shares of the inheritance. Although this could be challenged on the ground that it is not clear whether this is an application of the principle of primogeniture or an *ad hoc* agreement between Hillalum and his wife Alitum and the biological father/family of their first adopted son Iahatti-II, the fact that the “two shares” is associated to the “principal heir” clearly indicates the practice of primogeniture.

In the event of the adopted parents having children of their own either before or after adoption, the right of inheritance by the adopted sons was different from place to place and case by case. In some cases he was treated equal and at par with biological children, although the firstborn of the biological sons would normally be the prime heir. In other cases he was treated less favourably. In the following Nuzi sale adoption contract relating to Nashwi, the son of Ar-shenni, the adopted son had to marry the daughter of his adopted father (that is, his adopted sister):

[H]e adopted Wullu, the son of Puh-shenni. As long as Nashwi is alive, Wullu shall provide food and clothing; when Nashwi dies, Wullu shall become the heir. If Nashwi has a son of his own, he shall divide (the estate) equally with Wullu, but the son of Nashwi shall take the gods of Nashwi. However, if Nashwi does not have a son of his own, then Wullu shall take the gods of Nashwi. Furthermore, he gave his daughter Nuhuya in marriage to Wullu, and if Wullu takes another wife he shall forfeit the lands and buildings of Nashwi. Whoever defaults shall make compensation with 1 mina of silver and 1 mina of gold (*ANET*: 219d-220a).<sup>43</sup>

In the advent of Nashwi having his own biological son after adopting Wullu, the former and the latter (biological son and adopted son) would have equal rights in inheritance. However, the biological son would continue the family name, because normally the prime heir would inherit the family gods as well.<sup>44</sup> Wullu, the adopted son, had to marry his adopted sister. If Wullu married another wife, he would forfeit his inheritance. This could be a twist to make Nuhuya, the daughter of Nashwi, a share in her father’s estate. Nashwi might have felt that for his biological daughter to

<sup>43</sup> For other examples of Nuzi sale and real adoption contracts, see *ANET* 210-220.

<sup>44</sup> The provision here is reminiscent of the biblical account of Laban’s attempt to recover his household gods from Jacob (Gen 31:26ff.). In the same way Wullu is prohibited from taking other wives, Laban binds Jacob in verse 50 to marry no other wives beside his daughters (see also *ANET* 220, n.51).

receive no inheritance from his estate while his adopted son received all was unacceptable. But he was not in a position to undo the inheritance law which made sons and not daughters the legal heirs. All that the father could do to redress the situation was to give his biological daughter in marriage to his adopted son so that his daughter could continue to “own” the estate. This is in essence similar to adopting one’s son-in-law as one’s son. The only difference is that the former adoption preceded marriage, while in the latter, marriage preceded adoption. Inheritance rights with regard to estates were also an influence in marriage in Egypt.<sup>45</sup>

Family archives from Ptolemaic Egypt recorded marriages between uncle and niece and between cousins (cf. Marsman 2003:56 and works cited there).<sup>46</sup> This was done both to protect family estates from going to outsiders. The practice would also retain the family estate that kept reducing in size because of the unchecked growth of population. The prerogative of the first adopted son even above biological children who came afterwards is clearly attested in the adoption contract of the VAT 926 (cf. Boecker 1976:117):

Samash-apaili has been adopted by Bunini-abi and Husutum, the naditum of Marduk and Bunini-abi’s wife, from Saha-matum, Marat-Istar her daughter and Taribum (her) son. Even though Bunini-abi and Husutum should have ten children, Samash-apili is their eldest brother.

### 2.5.4.3 The division of the estate between Appu’s<sup>47</sup> two sons

In an Old or Middle Hittite text (ca. 1700-1500 BCE), wealthy Appu of the Šudul City in the sea coast in the land of Lulluwa did not have any children. Through the intervention of the Sun God, his wife conceived and gave him his first son, whom Appu named ‘Wrong’, because his ancestral gods did not follow his wishes. The second son was named ‘Right’ because his ancestral gods then followed the right way (*COS* 1.58). The text does not explain the wrong way and the right way. Naming a child according to circumstances at birth or his/her presumed destiny was, however,

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<sup>45</sup> In the Old Testament, marriage within one’s clan did not occur solely on economic grounds. In Numbers 36, the daughters of Zelophehad who had no sons were allowed to inherit their father’s land on the condition that they agreed to an endogamous marriage. This was to preserve the clan identity which was firmly tied to the family/clan land. One of the reasons why ancient Israelites could not alienate their family lands was because their ancestors were buried in the family land. Thus for ancient Israelites, “the land was more than an economic asset; it represented the family, joining the ancestors with their progeny and objectifying the irreducible bonds of kingship and descent upon which the early Israelite society was founded” (Van der Toorn 1996:199; see also Bendor 1996:45-86; Marsman 2003:61-63).

<sup>46</sup> To some extent, this paternal cross-cousin marriage is still practised in modern Egypt (among Egyptians). This researcher has witnessed such a case among the Sudanese Egyptians in Khartoum.

<sup>47</sup> The term “Appu” here could be a personalised and variant form of the Akkadian common word for “father” (*abu*), which root *pa* or *ba* has cognates in almost all the languages of both the ancient and modern world (Hebrew *ab*, Arabic *abu*, Marâ *paw*, Taiwanese *apa*, Hindi *baap*, etc.).

common in many ancient societies, including the Ancient Near East. Although the two brothers divided their father's estate equally, the elder Wrong took the healthy ploughing ox and gave the unhealthy cow to his younger brother Right. The just deity who was praised for always vindicating the just person would also thwart the evil elder son of Appu who attempted to defraud his honest younger brother.<sup>48</sup> The rendering of the last part of the text, 'drawing one acre in one direction and ... in the other direction,' is not clear. It would seem as if brother Wrong may have defrauded brother Right, also in terms of land. If so, this text would describe the misuse of the rights of the firstborn to the extreme, even unto the extent of displeasing the gods.<sup>49</sup>

### 2.5.5 Summary observation on inheritance in the Ancient Near East

From the above textual studies, we could possibly arrive at the following provisional observations on the custom of primogeniture in the family inheritance in the Ancient Near East. Traditions and practices that governed inheritance and primogeniture were more or less similar in all the three regions (Mesopotamia, Egypt and Syro-Palestine), with slight variations. By virtue of direct descent, sons, including adopted sons other than daughters, were customary heirs. Thus the law prohibited a father from disinheriting any of his sons except for grave offences. Illegitimate children/sons were excluded from inheritance. Within the system of "inheritance by sons only", the firstborn was the principal heir who succeeded his father as the head of the family and continued to hold the family title. By virtue of this position, he received the prime estate or a substantial additional share (*elātu*). The remaining estate was equally divided among all the heirs/sons.

Making written wills was uncommon, if not foreign, although when fathers usually spoke their last words before they died, these could have referred to how inheritances should be divided. In other

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<sup>48</sup> The text in part read: "... Appu's boys ... parted [from] Appu, and [divided up] the estate. Brother Wrong said to Brother Right: "Let us separate and settle down in different places." Brother Right said [to Brother Wrong]: "Then who [...]?" Brother Wrong said to Brother Right: "Since the mountains dwell separately, since the rivers flow in separate courses, as the very gods dwell separately ... let us also settle in different places." Wrong and Right began to divide up (the estate), while the Sun God looked on from heaven. Brother Wrong took [a half] and gave the other half to his brother Right... There was one plow ox and [one] cow. Wrong took the one healthy plow ox, and [gave] the unhealthy cow to his brother Right. The Sun God looked [on] from heaven (and said): "Let [Right's unhealthy] cow become healthy, and let her bear [...]." [But when they] arrived in Sippar and took their stand before the Sun God for judgment, [the Sun God] awarded the judgment to Brother Right. [Then Brother Wrong] began to curse. The Sun God heard the curses [and] said: "I will not [decide] it for you. Let Šawuška (a goddess), Ninevah's Queen, judge it for you." [Wrong and Right] set out. And when they arrived at Ninevah and stood before Šawuška [for judgment, ...] drew one acre in one direction [and ... in the other direction]" (COS 1:58: pp. 153-154).

<sup>49</sup> The events in this story are reminiscent of Yahweh's protection of Jacob from Laban (Gen 31:4-12); Abraham and Lot who divided the land (estate) and each went in separate direction (Gen 13:5-18); the two women's dispute over a baby and their appearance before King Solomon and his subsequent ruling (1 Ki 3:16-28).

words, fathers normally did not write wills. Children normally divided their father's estate shortly after his death. The division was presided over by royal court or temple judges according to the existing inheritance laws of the land as well as their father's last words. Heirs inherited the property as well as the debts of their deceased father. Some kinds of property were indivisible. It was common for the brothers to keep their prime family estate as joint property so that the family land would not be divided up. In such a case, the eldest son was normally the administrator of the joint property. Primogeniture was a privilege as well as a responsibility. The firstborn son succeeded the father as the head of the family, continued the family name, and shouldered the economic and social responsibilities for his non-adult younger brothers and sisters in the event of their father's death or incapacitation.

The above evidences indicate that primogeniture was a generally accepted and practised tradition in the Ancient Near East. However, there were exceptions to the rule. Because the prerogatives of the firstborn son was tied to the holding of the family office/title, fathers often exercised their authority and displaced their biological firstborns from holding the office of the firstborn in favour of their favoured younger sons. In other cases a father would divide his estate equally among all his sons. The Laws of Hammurabi did not directly stipulate the prerogatives of the firstborn son; however, §165 gave the father the authority to award an additional portion to his favoured son. In a document from Nuzi (Brin 1994:254 and literature cited there), the father stated: "They, the sons, will divide equally; there will not be among them a firstborn" (HSS XIX.23, lines 4-5). Another document reads: "Among my sons there is not one who is the firstborn" (HSS XIX.17, lines 12-14). However, these two cases of equal division do not invalidate the existence of primogeniture; they rather affirm the existence of the custom, as the statement, "there will not be among them a firstborn", clearly indicates. The cases depict a father's authority to change or violate the customary law and elevate any of his sons to the position of a firstborn. This is supported by another document in which the same person appoints one among his sons as firstborn, who thereby receives a double portion (HSS XIX.37; Brin 1994:254).

We have noted the prerogative of the firstborn son in the Hermopolis Codex from Egypt. The same codex indicates that the father was free to give the firstborn right to the younger son, make any other decision that he wished, or give his firstborn son not merely twice as much as other sons received, but all of his estate. An Egyptian marriage contract from the third century also gave the father an authority to decide who would be the firstborn and how much he would inherit: "My first-born son, your first-born son, is the master of all that belongs to me and of all my property

which I may acquire.” This text stipulates that the firstborn would receive all the property. Other parallel contracts made provision for other brothers to inherit in addition to the firstborn (cf. Brin 1994:254-255). All these evidences clearly indicate that, although primogeniture was a commonly practised custom in the Ancient Near East, it was not a strict civil law, the violation of which would constitute a criminal offence, but a cultural-historical phenomenon that could be changed and modified.

## **2.6 PRIMOGENITURE IN ROYAL SUCCESSION**

### **2.6.1 Introductory observations**

In the preceding pages we discussed that in addition to receiving a superior share of the inheritance, the biological firstborn or a son who was chosen to hold the firstborn office succeeded his father as head of the family. However, when it comes to succession in public office, we do not have explicit textual evidence concerning succession to priesthood,<sup>50</sup> prophetic office, judicial post (judges), or scribal office (scribes). Texts discovered so far mainly deal with succession to the throne. Therefore, our discussion on primogeniture and succession in this section will mainly focus on royal succession.

It should be noted that myths concerning the significance of the firstborn son was not unique to the Ancient Near East. It was generally attested in almost all the ancient societies, both in civil and cultic aspects. In many societies the firstborn was highly esteemed because he was a promise; the first in any series; be it flock, fruit, or a child, especially a son, and was considered as the opener of the way. For this reason firstborn sons were offered to the gods, who demanded the most precious things, as cultic sacrifices in many ancient societies. Other societies regarded the firstborn son as a threat (taboo) because of the belief that he would become a rival to his father (we will return to this in Chapter Four under “sacred/theological texture”).

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<sup>50</sup> But a Sumerian court case discussed above (3.5.2) seems to imply that the priesthood of Ninlil shall go to Ur-Suena’s prime heir (his firstborn son). The priesthood of Ninlil may have been traditionally held by Ur-Suena’s family.

## 2.6.2 Royal succession in Mesopotamia

### 2.6.2.1 Primogeniture in the mythical assembly (court) of the gods

In the *Enûma Eliš*, the Mesopotamian creation epic (*ANET*: 60-72; *COS* 1.111), otherwise referred to as the epic of “the exaltation of the god Marduk” (Foster 2000:390-391), the firstborn status is associated with the gods Anu and Marduk and their rival god Kingu. It could be that they were either elevated above all other gods because they were firstborns, or they were given the firstborn office because of their powers that surpassed all other gods. Anu was the firstborn of Anshar (*ANET* 61a, *passim*) and Marduk the firstborn of Ea (*COS* 2.131, lines i:1-26). Marduk was also presented as the firstborn of all the gods (cf. *ANET*: 66b) because he was the firstborn of Lahmu and Lahamu, the gods that were formed first (cf. *COS* 1.111:109-110). Kingu was presented as the firstborn (as well as the consort/husband) of the mother-god Tiamat (*ANET*: 62d, *passim*). To the praise of his firstborn Anu, Anshar said: “Stalwart son, valiant warrior, whose strength is enormous, whose onslaught is irresistible” (*COS* 1.111:394b).

Anu apparently became the head of the host of the Anunika gods to whom “all the gods were kneeling (humbled) [before him], [all] the gods of the land were kneeling [humbled before him]” (*COS* 1.109-110). But Anu could not defeat the enemy god, Kingu, whom Tiamat had elaborately exalted to the level of his equal: “From among the gods, her firstborn, who formed [her Assembly], she elevated Kingu, made him chief among them. The leading of the ranks, command of the Assembly... As soon as Kingu was elevated, possessed of [the rank of Anu]...” (*ANET*: 62d-63a). Ultimately it was Marduk who triumphed over the Tiamat-Kingu forces. Apsu, the primeval progenitor god, had the following to say concerning Marduk: “The mighty firstborn, champion of his father, hastener of battle, the warrior Marduk” (*COS* 1.111:394c).

The above lines are indicative of the highly esteemed position of the firstborn and the practice of primogeniture in Mesopotamia. The mythical heavenly court (assembly) of the gods, exaltation of certain gods to be the chief or firstborn gods, deputy chief gods, and the existence of hosts of gods, represented the earthly kingdom of Mesopotamia – the rise of its kings, their nobles and citizens. Succession in the heavenly realm followed primogeniture. The process of succession in the earthly Mesopotamian Kingdom was to follow the same.

### 2.6.2.2 Succession in Ur III Dynasty

As mentioned earlier, the Laws of Ur-Namma (Ur-Nammu) (*COS* 2.153) as we have it today, do not contain inheritance and succession laws as such. The laws begin with a lengthy prologue stating the divine parentage of Ur-Namma and his appointment to the throne (lines 1-86) followed by his reform programs.<sup>51</sup> There is no explicit reference to whether or not Ur-Namma's successor-son Shulgi was the firstborn son. Judging from the general practice of ancient dynastic succession where the firstborn son normally enjoyed prerogatives, primogeniture may have been the practice for succession during the Ur III dynasty. Other possible reasons for omission could be either because primogeniture was not practised in these periods or the tradition/practice was generally accepted so that there was no need of promulgating laws in this regard.

### 2.6.2.3 Akkad dynastic prophecy

A dynastic prophecy is the most recent addition to the growing corpus of Akkadian prophecy texts. This particular text is in a poor state of preservation, not having a single complete line. The excerpt includes the fragmentary introduction which preserves indications of first-person speech. It also omits the fragmentary fourth column. From the reference to a king in relation to Babylon, Nippur and Akkad, it may probably date to around the first part of the second millennium (18<sup>th</sup> century BCE). The text does not state the birth position of the prince who would succeed the throne of his father. Based on the general practice of primogeniture in the dynastic succession, coupled by the use of a singular form, "son", we could possibly deduce that a son in question here probably refers to the firstborn prince.<sup>52</sup>

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<sup>51</sup> This reform would appear to be a carry-over from King Uru-ka-gina of Lagash's (ca. 2350 BCE) reform who first attempted to standardise the Sumerian legal system, whose reforms were, however, limited to bureaucracy and tax cuts for the general populace (cf. *COS* 2.152, pp.407-408; Arnold & Beyer 2005:104). The reforms include: existing abuses and corruptions (lines 87-103), establishment of justice in the land (lines 104-113), political and economic reforms (lines 114-170), trade reforms (lines 114-124), liberation of oppressed population (lines 125-134), standardisation of weights and measures (lines 135-149), transportation routes made secure (lines 150-161), and establishment of equitable justice (lines 162-170+). This was followed by a handful of casuistic laws (*COS* 2.153).

<sup>52</sup> Generically and stylistically, this prophecy bears close resemblance to Daniel 11:2-45 (Tremper Longman III, *COS* 1.150, p. 481). The text in part read: "... [He will exercise kingship] for three years... After him his son will [sit] on the throne..." (*COS* 1.150).

#### 2.6.2.4 Royal succession in Old Babylon

Primogeniture was a common practice of royal succession in Old Babylon. Based on the component of the word *Kuduru*, the name Nebuchadnezzar itself indicates that he was the firstborn. Nebuchadnezzar himself remarked: “*jāti DUMU-UŠ-šu rêštâ narâm libbišu*” (I am his firstborn [literally, his chief heir, that is, of Nabopolassar], the beloved of his ear) (VAB 4.122 v 4). The term *aplu* used for a prince, the heir apparent, in the actual practice of crowning of the firstborn, is to be understood in the sense of he who comes after the head of the family, the king, as heir to the throne. The fact that primogeniture was customary in royal succession in Old Babylon was also attested in how kings who were not firstborn presented themselves as firstborn, with the aim of legitimising their rule. For example, Merodach-baladan, whose name is written in Akkadian *Marduk(a)pl(a) iddin(a)*, means the god Marduk has given an heir, a firstborn. In one inscription he even designated himself as the firstborn of the king of Babylon, although this was not the case. On his part, Burnaburiash III represented himself as the firstborn son of Kadamman-Encil I (Brin 1994:272-273 and literature cited there).

#### 2.6.2.5 New Assyrian inscription on royal succession (first millennium – 680-669 BCE)

A system of reference to father, son, grandson, and so on is found in the list of Assyrian kings that depicted many generations of royal succession. This illustrates that royal succession in Assyria was customarily from father to son. In contrast, in Elam, it was transmitted through the mother, so that one king’s brothers might have a superior claim to the succession over his sons (Saggs 1984:114). The following succession story illustrates a vivid picture of primogeniture in royal succession in Assyria.

Although I was younger brother of my older brothers, yet at the command of Ashur, Sin, Shamash, Bel, Nabu, Ishtar of Ninevah and Ishtar of Erbil, my father who begot me truly promoted me in the assembly of my brothers, saying: ‘This is the son of my succession’. When he enquired of Shamash and Adad [the oracle gods] by divination, they answered him a firm ‘yes’, saying ‘He is your successor’. Giving proper respect to their solemn word, he brought together the people of Assyria small and great, my brothers, the seed of my father’s house; and before Ashur, Sin, Shamash, Nabu, the gods of Assyria, the gods dwelling in heaven and earth, he made them swear their solemn word to protect my succession. In a favorable month, on a favorable day, according to their [the gods’] exalted command I joyfully entered the Palace of the Succession,<sup>53</sup> the awe-inspiring place wherein is the essence of kingship (Saggs 1984:104).

<sup>53</sup> The heir apparent lived in a special palace, so that the royal intentions for the succession would be known to all (cf. Saggs 1984:104).

These are the inscriptions of King Esarhaddon (680-669 BCE), the successor of his father, King Sennacherib. A superficial reading of this inscription may lead one to conclude that royal succession in the New Assyria was by nomination, not by primogeniture, that is, the firstborn did not automatically become king (cf. Saggs 1984:104). However, a careful reading of the beginning apologetic phrase “*although I was younger brother to my older brothers*”, clearly indicates that primogeniture was in fact a known and generally practised tradition. The gods’ legitimation was sought and the royal family and representatives of the people were made to swear an oath to accept the nomination of Esarhaddon to the throne. One wonders, had succession been by primogeniture, would it still need a divine ratification? It would appear that the crown nomination had to be presented as a divinely approved one because it betrayed the normal procedure of succession by primogeniture. The same case was attested in Old Babylon discussed above. This must have been the reason that Esarhaddon had to fight for his throne and the gods’ re-ratification was sought again even though the gods had previously ratified his father King Sennacherib’s nomination of him as his successor.<sup>54</sup>

### 2.6.3 Royal succession in Egypt

Beginning with Nemes, the traditional founder of the first Egyptian dynasty, Manetho the Greek historian (see Cornelius and Venter 2002:7) divided the Egyptian history into thirty dynasties. The oldest son was the main heir in the Egyptian family (cf. Pestman 1969; Marsman 2003:262) and so in the dynastic succession. When the throne became a dynasty, it was normally the firstborn pharaoh-prince who succeeded his father-pharaoh.<sup>55</sup> There was no known female pharaoh.

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<sup>54</sup> The princes of Assyria who wanted to assassinate their father Sennacherib timed their operation to coincide with when their brother, the crown prince Esarhaddon, was in command of an army somewhere in the west. But Esarhaddon, duly assured by oracles from the principal gods of Assyria who said, “Go! Hold not back! We go at your side. We slay your foes,” immediately moved his troops towards Assyria. The two forces engaged in the region of the Upper Habur. The morale of Esarhaddon’s army was high as they knew that the gods were on their side whereas those of the regicides’ troops, knowing that they were fighting against the crown prince endorsed by the gods, were low. In the midst of the battle the word spread, ‘This is our king!’ The regicides’ troops switched sides and finally Esarhaddon established his throne securely (cf. Saggs 1984:104-105). This succession story is reminiscent of the succession strife between biblical Adonijah (surviving eldest son of David) and Solomon (the younger son) (1 Ki 1:1-2:25). Earlier, Absalom, David’s firstborn, had claimed the throne through an attempted patricide, but was unsuccessful (2 Sam 15:1-19:8). Absalom might have sensed David’s plan to pass over him in favour of Solomon, his younger half brother.

<sup>55</sup> The clearest evidence of primogeniture in the Egyptian dynasty comes from the biblical account of the last of the ten plagues that befell Pharaoh and his people, which was the turning point for the Israelites exodus from Egypt (Exod 11:5): hmhb rwb lkw -yxrh rxa rva hxpvh rwb d[mask-l] bvyh h[rp rwbm -yrcm #rab rwb-lk tmw  
 “Every firstborn in the land of Egypt shall die from *the firstborn of Pharaoh who sits on his throne* to the firstborn of the slave girl who is behind the millstone and all the firstborn of the cattle”; (researcher’s translation and emphases).

Like in Mesopotamia, divine legitimation of succession was a common theme in succession in Egypt. This is particularly true of the Hieroglyphic Luwan royal inscription, which favourite theme is a ruler's succession to the paternal throne by a divine choice, hope or support (see Kitchen 2003:128-129; for references to texts and commentaries; see also Kitchen 1973). The texts do not mention the birth positions of successors. However, the voice of divine legitimation became even stronger, whenever the tradition of primogeniture was not followed. However, divine legitimation to the throne, be it the firstborn or a younger son, did not always ensure the stability of the pharaonic dynasties, as we could see from dynastic changes and succession strives.

## 2.6.4 Royal succession in Syro-Palestine

### 2.6.4.1 The public proclamation of Ammitaku

Ammitaku the governor of Alalakh during his life time, in the presence of Yarimlin the king, his lord, he willed his house: his city house, city areas, fields, and whatever is his, just as his father and mother had appointed him to be king he has appointed Hammurabi his son, whom Nawarari bore to him, to be governor of the city. Thus he said: ... Hammurabi my son [...] There is no other heir. Hammurabi is the lord of my city and my house. He is the servant of Yarimlin the king my lord (*COS* 2.136).<sup>56</sup>

This proclamation of Ammitaku, governor of Alalakh, refers to Hammurabi's succession to the throne of his father, King Yarimlin. The proclamation (dated the Middle Bronze Age [Level VII]) reflects the concern for the stability of the dynasty. The text is not explicit whether Hammurabi was the firstborn son of King Yarimlin or the only son. Lines 19-20 only state that there was no other heir. So it could be either Hammurabi was the only son of the king, the firstborn of the king, or the favoured son of the king who was chosen to be the sole successor. His mother, Nawarari, could have been the first wife, a woman of noble birth/princess, or the favourite wife of the king. She must have stood tall above the other wives of the king. Thus mentioning her name would add some weight to the legitimacy of the crowning of her son Hammurabi to be the successor of King Yarimlin.<sup>57</sup>

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<sup>56</sup> The proclamation concludes with a list of witnesses of officials of different departments and the date.

<sup>57</sup> This proclamation may be compared to the account of David's arrangement for the public proclamation of Solomon as king and his successor (1 Ki ch.1).

### 2.6.4.2 The autobiography of King Idrimi<sup>58</sup> on royal succession (ca. 1500 BCE)

Thus I (said): “Whoever possesses his father’s house is indeed the foremost heir and whoever [does not] is a servant of the citizens of Emar” (*COS* 1.148: line 10) ... I established my land. I made my cities as they were previously with our fathers. (In accord with?) the signs that the gods of Alalah established and the sacrifices of our father who repeatedly performed them, I repeatedly performed them. I performed them and entrusted them to my son Adad-nirari (*COS* 1.148 line 79).

This inscription was found in Alalakh in southwestern Anatolia. Idrimi who fled his ancestral city of Aleppo in northern Syria with his brothers for the city of Emar on the Euphrates (line 3) eventually became a leading semi-nomadic *Habiru* warrior in the countryside of Canaan (line 27b). He captured the city of Alalakh and its surroundings. He then contacted Parrattarna, the king of Mittani, a kingdom situated in northern Syria between the Euphrates bend and the Tigris, who endorsed his rule of Alalakh and made him his vassal (cf. Van De Mieroop 2004:142-143).

Could the *Habiru* warriors of Canaan in line 27b, with whom Idrimi dwelled for seven years and eventually became their leading warrior, have some relation with the Hebrews of the Old Testament? For Van De Mieroop (2004:143), these *Habiru* people are semi-nomadic social outcasts. Although it is an interesting subject, we shall not pursue it further here. It is most likely that “the foremost heir” refers to the firstborn prince.

### 2.6.4.3 Royal succession in Ugarit

Primogeniture in royal succession in Ugarit was attested in the story of the marriage between, and subsequent divorce of, Ammuri princess *bittu rabīti* and Ugaritic king Ammithtamru II. Their son Utrisharruma is specifically referred to as the *eldest* and *heir* to the Ugaritic throne. The story states that King Ammithtamru received permission from the Hittite king Tudkhaliyas IV not to name his firstborn son Utrisharruma as heir to the throne if Utrisharruma decided to go with his now divorced mother (Ras Shamra 17.159:7; cf. Marsman 2003:664; Brin 1994:280).

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<sup>58</sup> The text is preserved on a statue of Idrimi, discovered by Sir Leonard Woolley in 1939 during his excavations at Tell Atshana (Alalah). Although it was found in the debris of Level IB (ca. 1200 BCE), the statue was dated by most scholars back to Level IV (1500 BCE). Presently the statue is housed at the British Museum. The short statue (1.07 m) represents the king sitting on a throne. It was fashioned from magnesite and dolorite and covered on the front by an inscription of 104 lines. The last few lines run down Idrimi’s cheek to his mouth, giving the impression that these words were uttered by the figure represented by the statue (Longman 1997:479).

## 2.6.5 Hittite royal succession

### 2.6.5.1 A treaty of Hittite King Tudḫaliya IV with his vassal King Kurunta of Tarḫuntašša

This treaty written on the bronze tablet found in Hattuša (cf. *COS* 2:18, §19, §20 and §21) stipulates Kurunta's heir and successor (§19), the security of Kurunta's line even in the event of treason (§20), and Kurunta's line for ensuring the succession and permanence of Tudḫaliya's descendants in the Great Hittite Dynasty (§21). Based on the permission King Tudḫaliya gave to his vassal king Ammittamru not to name the latter's firstborn as the crown prince, it is most likely that primogeniture was a commonly practised custom for royal succession in the Hittite Kingdom.

### 2.6.5.2 The proclamation of Telipinu on Hittite royal succession

King shall become a son (who is a) prince of first rank only. If there is no first rank prince, he who is a son of second rank shall become King. If there is no prince, (no) male, she who is the first rank princess, for her they shall take an in-marrying (son-in-law) and he shall become king (*COS* 1.76: §28).<sup>59</sup>

“A son (who is a) prince of first rank only” could be either a son of the principal or first wife of the king. The alternative translation, “of the sons only the prince of first rank” is also feasible (Starke; cf. Van der Hout 1997:196, n. 50). In the case of the main/principal wife having more than one son, the “prince of the first rank” would normally be the firstborn prince. Based on this text, the order of succession in the Hittite Kingdom was as follow: prince of the first-ranking wife, with prerogatives accorded to the firstborn prince in the case of the first-ranking wife having more than one son; son/prince of the second-ranking wife, with prerogatives accorded to the firstborn prince in the case of the second-ranking wife having more than one son; the husband of the daughter-princess of the first-ranking wife (see also *COS* 2.36-39, pp. 156-162). The ‘in-marrying’ here seems to refer to an endogamous marriage.

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<sup>59</sup> This thirteenth century royal succession Proclamation or Decree of King Telipinu (ca. 1500 BCE) “is an attempt to put an end to the inner-dynastic strife and bloodshed which seemed to have held the Hittite Empire in its grip since Hattušili I (ca. 1600 BCE). In order to do so, Telipinu refrained from killing his own opponents. Instead, he sent them away unharmed. In this way, he firmly established rules of succession (§28) as well as how to deal with such offenders in the future (§§29-34) (Van der Hout 1997:194). Like other Hittite texts, the historical reason for the promulgation of the law is given in §§1-27. The first part of the Decree of Telipinu provides information on the Old Hittite Empire. The second part of the text (§§35-50) deals with an agricultural-administrative reform, but is much less well preserved. Being a comparatively unreligious document as opposed to, for instance, the Apology of Hattušili (text 1.77), there are not as many possible links to the Old Testament as in the latter (Van der Hout 1997:194 and literature cited there).

### 2.6.5.3 Vassal king's duty in situation of strife for succession to the Hittite suzerain throne

If [my] son, who sits upon my throne, quarrels [with] one of his brothers, and he would remove him, you shall not interfere with them, saying to him, "Kill your brother or imprison him and do no[t] let him go free." But if you really make peace between them, he will not kill and will not imprison (him). But if you do not make peace between them, you shall have been unfaithful to this treaty (*COS 2.82: lines 17b-19a*).<sup>60</sup>

The text forms a part of the stipulations of a royal treaty that the Hittite Suzerain made with his vassal king. The great king foresaw the future royal strife between his sons, regardless of whom he crowned to be his successor. Even if he followed the normal tradition and made his firstborn prince to sit on his throne, following the tradition would not necessarily prevent royal strife; nor would the crowning of his favourite son prevent it.

### 2.6.6 Summary observations on primogeniture in royal succession in the Ancient Near East

From the above discussions, we could possibly deduce the following summary observations on the practice of primogeniture in royal succession in the Ancient Near East. Sons other than daughters were legal successors to the throne. Normally it was the firstborn son who succeeded his father as king. This was especially true of the established dynasties. Establishing primogeniture system for royal succession had both cultic/mythical and civil expressions. From the cultic perspective, myths concerning the significance and prerogatives of the firstborn son were commonly attested in the ancient world, including the Ancient Near East. Therefore, the firstborn son was a natural and easily accepted choice to succeed his father's throne. In civil life, since the firstborn prince was the first to mature, he was naturally made the crown prince who was to take the throne in the advent of the father-king's death. This would provide continuity and security of the dynasty.

However, there were surprising exceptions to the rule. Quite often, the father-kings chose their successors on the basis of favour other than primogeniture. The question arises as to what would make a prince more favourable above his brothers, including the firstborn? It could be either

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<sup>60</sup> These inscriptions of Sefire (once called Sujin) were discovered by S Ronzevalle in 1930 in a village southeast of Aleppo. Two of them became the property of the Damascus Museum in 1948. The third stele was acquired by the British Museum in 1956. The three stelae are related not only by their provenance, but also by their contents, script, and language. The text is a part of the inscriptions of Bar-Ga'Yah and Mati'el from Sefire. They are inscribed in Old Aramaic and dated from the mid-eighth century, sometime prior to 740 BCE, the year in which Tiglath-pileser III conquered Arpad and made it part of the Assyrian empire (Fitzmyer, *COS 2.82, p.213*).

because of the prince's mother who was the favourite queen/wife or it could simply be because of the prince's own character, wisdom, and strength that stood tall above his brothers. As in inheritance and succession to the family office and titles where a father could overrule the customary law of primogeniture and appoint any of his sons to be his prime heir, the ruling king could also overrule the commonly practised primogeniture custom for dynastic succession and so appoint any of the younger sons as his successor. In such a situation whereby a prince other than the firstborn one was chosen to be the successor, the legitimation of the superior power – the suzerain or the gods – was normally sought. For example, in Ugarit, Baal agreed that the goddess Asherah would determine which of the sons would be king (UT 49 I 16-18; Brin 1994:280).

We have noted that the gods' legitimation and re-legitimation was sought for Esarhadon who was not the firstborn prince. Esarhadon himself appointed his youngest son, Ashurbanipal, to rule over Assyria, the centre of his empire, while his oldest son, Shamash-shum-ukin, was named ruler of Babylon alone. Ashurbanipal, then, declared that he was the firstborn of the dynasty and that the gods had destined him from the womb to be king. In another document, the king of a strange land sent his firstborn into exile in favour of the youngest (*TCL* 6.4, cited in *CAD*, XVI, p. 182; Brin 1994:281). In one particular text it is stated that the choice of a successor to the throne would be determined by lot. If certain signs appear on the lot, the firstborn will reign (*aplum rabûm kussâm iṣabbat*). If certain other signs appear the youngest will reign instead (*aplum ṣehrûm*) (YOS 10.31 II 4, cited in *CAD* A II, p. 175; Brin 1994:281). This last one is exclusively a choice between the firstborn son (primogeniture) and lastborn son (ultimogeniture); no chance was given to middle-born sons. The fact that a ruling king could choose his successor from any of his sons indicates that, although primogeniture was the customary practice for dynastic succession in the Ancient Near East, the tradition could be violated or changed through the legitimation of the superior authority (suzerain or gods). The gods' approval was not sought for the violation of the primogeniture tradition in inheritance. The reason for this could be that it was regarded as "private" family affairs. Dynastic succession, however, was in the public domain. Therefore, when normal procedures were not followed, the gods' approval had to be sought to legitimate the ascension to the throne, which in essence was a way of seeking public approval.

Regardless of whether primogeniture was followed or not, strife over succession to the throne seemed to be normal occurrences in the Ancient Near East. When primogeniture was followed, a younger prince could claim the throne on the basis that he would be a better ruler. On the other hand, when it was not followed, the firstborn prince could claim the throne from his younger

brother-king on the basis that the throne rightfully belonged to him. In other cases, a thirst for power, wealth, name and fame played a role. Ultimately it was the fittest king who survived.

## **2.7 INHERITANCE BY DAUGHTERS AND WIVES IN THE ANCIENT NEAR EAST**

### **2.7.1 Introductory observations**

Above we noted that the Ancient Near East patriarchal familial rules excluded daughters/women from inheritance and succession. However, there were surprising and significant exceptions to the rule. Texts from different regions of the Ancient Near East covering different periods of time would indicate that daughters and wives/widows could indeed inherit and women could own property. Although it was normally on certain conditions and because of special circumstances, the fact that women could actually inherit and own properties indicates that women of the Ancient Near East did have certain values and rights that women in some societies today are deprived of. In what follows, we shall consider texts that include daughters in the inheritance of their paternal estates, evidence of widows inheriting from their deceased husbands, women's dowries and marriage gifts, and significant nuances relating to daughters/women's inheritance and property rights. There is, however, no textual evidence of princesses succeeding royal thrones in the Ancient Near East texts. Thus this section mainly deals with inheritance by daughters and wives.

### **2.7.2 Inheritance by daughters and wives in Mesopotamia**

#### **2.7.2.1 Certain cases on the division of inheritance**

Sections A+B of the "Grand document juridique" indicate that, during Farâ to Old Sumerian periods, the wife and her son inherited not only the property of the deceased head of the household, but also his obligations. Widows inherited the administration of their husband's estate for the benefit of their sons as evidenced by a son participating in transactions by his mother. Brothers and sisters could inherit from their deceased brother. The widow had the right to dispose of her dowry or marital gifts, though normally to her daughters (Wilcke 2003:70-71 and texts and literature cited there).

Women's ownership of properties ("property of the mother") was first attested in the Sargonic Nippur (cf. Wilcke 2003:71 and texts and literature cited there). By the turn of the latter part of the third millennium, a daughter's right to inheritance in the absence of a son was clearly attested in Lagash. Gudea of Lagash (ca. 2150 BCE) declared: "In the house in which there is no son as an heir, I have made the daughter an heir" (Gudea Statue B, col. Vii:44-46; see Marsman 2003:259). By the time of Lipit-Ishtar, it had developed into a law. In Nuzi, a sonless father could give his daughter the status of "son" and thus secured her inheritance rights.<sup>61</sup>

### 2.7.2.2 The Laws of Lipit-Ishtar on inheritance by daughters and wives

LL §21b (*COS* 2.154):

If a man dies without male offspring, an unmarried daughter shall be his heir (*COS* 2.154: §b). If [a man dies] and his daughter [is married (?)], the property of the paternal estate [...], a young sister, after [...] the house [...] (*COS* 2.154: §c). [If...] marries, the (marriage) gift which is given by (?) her/his paternal estate shall be taken for her/his heir.[...] (*COS* 2.154: §21a). [If...] is given to a wife, her/his brothers will not include for division (among their inheritance shares) the (marriage) gift which has been given by (?) her/his paternal estate, but [...].

The above laws stipulates that a daughter would be the prime heir of her father in the absence of a male offspring. Possibly the four clauses are interrelated, and §21b a continuation of the provision of §21a rather than a new one. The first clause, §b, is interesting. Within the existing law of sons other than daughters as legal heirs, the law addresses a situation where a man did not have sons, but only daughters. In such a case in the absence of a son, from among all the daughters the unmarried one would be the prime heir. This unmarried daughter could be either the one who had chosen to enter into religious (temple) service (see texts below) and thus remained unmarried all her life, or a daughter who would remain unmarried all her life for some other reasons than religious. If a man had more than one unmarried daughters, they would probably divide the inheritance equally. As to what would happen in the advent of the unmarried daughter and heir's eventual marriage, the text does not provide for such an eventuality. It could be that the inheritance was divided between all the married daughters. In practice, as almost all the daughters

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<sup>61</sup> Some men at Nuzi used matronyms. The mothers of these men were probably women who were adopted as sons by their fathers. However, children of prostitutes could also use matronyms. Giving a daughter both female and male status was also attested in Emar testaments, "declare a daughter to be 'father and mother' of the house, meaning that she became guardian of the family and had the right to usufruct the family property" (cf. Marsman 2003:261, 394 and literature cited there).

either were married off or became priestesses, the unmarried daughter in question was probably a little girl or an infant at the time of the father's death (cf. VerSteeg 2000:102-103).<sup>62</sup>

LL §22 (COS 2.154):

If, during a father's lifetime, his daughter becomes an *ugbaltu*, a *nadītu*, or a *qadištu*, they (her brothers) shall divide the estate considering her as an equal heir.

The above law clearly stipulates that daughters and sons were on an equal footing for inheritance. However, the law stipulates the eligibility of daughters for equal inheritance with their brothers on the condition that they became *ugbaltu*,<sup>63</sup> a *nadītu*,<sup>64</sup> or a *qadištu*.<sup>65</sup> This clause warrants three possible interpretations.

First, becoming an *ugbaltu*, a *nadītu*, or a *qadištu* must have been a highly esteemed vocation which brought honour to her father, who in return elevated her to an equal status with her brothers, even though daughters were normally excluded from inheritance share. Second, state temples needed these services, but many women would not volunteer to enter into the service. Thus in order to attract recruits, the state made this provision but the relevant payments in this regard were done by their own fathers, making them equal with their brothers for the purpose of inheritance which was not normally the case.

Third, it could be that it was a normal practice,<sup>66</sup> for sons and daughters to receive equal shares of inheritance but fathers/brothers had developed a tendency to exclude their daughters/sisters who entered into the religious services of the temple on the ground that they would no longer have interest/need for "secular" things such as inheritance. Or fathers/brothers may have feared that

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<sup>62</sup> Or, if we could draw some parallels from the matrilineal Khasi-Jantia people of the North East India where the youngest daughter is the legal heir of the family property, the heir apparent of a sonless Mesopotamian father could well be his youngest daughter. If that is the case, ultimogeniture other than primogeniture was the norm when it comes to a son-less father being inherited by his daughters.

<sup>63</sup> The Akkadian word *ugbaltu* refers to a member of a group or class of priestesses, with special privileges, sometimes of royal lineage; Sumerian *nin-dingir* (cf. Roth 1997 [1995]:273).

<sup>64</sup> The Akkadian term *nadītu* refers to a member of a group or class of Old Babylonian temple dedicatees (see below for further discussion on this group of women).

<sup>65</sup> The Akkadian *qadištu* (Assyrian *gadiltu*; Sumerian *nu-gig*) lady is a member of a group or class of minor temple dedicatees or priestesses (cf. Roth 1997 [1995]:272).

<sup>66</sup> On this subject, see Driver & Miles (1952:335, 337) who contend that in Old Babylon (see the Laws of Hammurabi below) a daughter who did not become a priestess could also inherit a share of her father's estate: "The relevant sections of the Laws deal mainly with the inheritance of priestesses but the documents show other daughters apparently joining with their brothers in the division of their father's estate" (see also VerSteeg 2000:102).

they would lose part of their estate to the state (temple), because the daughter/sister may (or be coerced to) donate her shares to the state (temple), and thus excluded their daughters/sisters from inheritance. Whichever interpretation one adopts, the law stipulates that the inheritance right of a daughter would not be changed, even if she had entered into the temple service. This law presents a strong case for equal rights of inheritance for daughters and sons (see also the Laws of Hammurabi below).

### 2.7.2.3 The Laws of Eshnuna on bridewealth and dowries

LE §17 (COS 2.130):

Should a member of the *awilu*-class bring the bridewealth to the house of his father-in-law – if either (the groom or bride then) should go to his or her fate, the silver shall revert to its original owner (i.e., the widower or his heir).

This law is interesting. The scenario here is that the man of the *awilu*-<sup>67</sup> class had paid his wife's *terhatum* (bride-price) to his father-in-law, but unfortunately he or his wife died young (probably before the wife gave birth to a child). In such a case, the purpose of the bride-price was not fully served. Thus the bride-price that was paid had to be returned to the widower or his heir so that the widower could buy another wife. In the case of the husband's death, if there was no possibility of a levirate marriage,<sup>68</sup> the bride-price would be returned to the husband's family so that the widow could return to her father's house. This will give her the freedom to remarry.<sup>69</sup>

LE §18 (COS 2.130):

If he marries her and she enters his house and then either the groom or the bride goes to his or her fate, he will not take out all that had brought, but only its excess shall he take.

Subjects in the final clause of this law are uncertain, whether it is the husband (he), the wife (she), the husband's father (he), or the wife's father (he), and the resolutions outlined are not clear (for a

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<sup>67</sup> This Akkadian term *awilu* cognates the Babylonian *amēlu*, Assyrian *a'īlu*, and Sumerian *lú*. The term is used to refer to a free and land-owning man (person) as the subject of the law provision in general and a member of the highest privileged class in contrast to a member of the *muškēnu*-class or to a slave in particular (cf. Roth 1997 [1995]:268).

<sup>68</sup> The institution of levirate marriage probably existed in Ugarit, Hatti, and Assyria (cf. Marsman 2003:719), but there seems to be no explicit trace of it as an institution in Babylon and Egypt.

<sup>69</sup> In the Marā culture the bride-price would not be returned in such a case. If the late wife had an unmarried younger sister, she would be talked to for the widower (called *a kei*, meaning “to pull over”) and if the late husband had an unmarried younger brother a levirate marriage (*a bāh*) would be arranged. Even if neither of these (*a kei* or *a bāh*) happened, the bride-price would not be returned to the husband's side in the case of either husband or wife's death, as it was a tragedy beyond human control.

discussion of possibilities, see Yaron 1988 [1969]:179-190). The clause “all that had brought” could refer either the *šeriktum* (dowries) or the *terhatum* (‘bridewealth’ or bride-price) or both. However, since the preceding clause (§18) specifically deals with ‘bridewealth’, this clause (§18) is probably about dowries. In the event of a husband’s death and the widowed wife wishing to return to her father’s place, she should not remove all her dowries from her husband’s house. If it was the wife who died, her father should not take back everything he gave to her daughter from his son-in-law’s house. Other laws discussed elsewhere in the present chapter stipulated that the mother’s dowries would go to her children.

#### **2.7.2.4 The Laws of Hammurabi on inheritance by daughters and wives**

LH §150 (COS 2.131):

If a man awards to his wife a field, orchard, house, or movable property, and makes out a sealed document for her, after her husband’s death her children will not bring a claim against her; the mother shall give her estate to whichever of her children she loves, but she will not give it to an outsider.

The modern notion of husband and wife as one and thus having a joint ownership of their properties was foreign to the Ancient Near East polygamous family. The father’s estate belonged to his sons, not to his wives. Therefore, when a man awarded any of his wives a field, orchard, house, or movable property, he had to legalise it (in a sealed document) so that the children of the man’s other wives, as well as the woman’s own children, would not have an automatic claim after the man’s death. Although the wife in question had the power to dispose of her estate, the irony here is that she had to give it only to whichever of her children she chose; she could not dispose of it to outsiders. The reason for this could probably be to prevent the alienation of the family land.

LH §162 (COS 2.131):

If a man marries a wife, she bears him children, and that woman then goes to her fate, her father shall have no claim to her dowry; her dowry belongs only to her children.

The dowry system in the Ancient Near East was different from the dowry practice in some parts of India. The former, according to Westbrook (1991:142-143) is a “property assigned to a bride and brought with her into her husband’s house upon marriage,” while the latter is a payment necessary to give a daughter in marriage. Therefore, the two are not the same. In many respects, dowry in the Ancient Near East was a share of inheritance which a daughter received upon leaving her paternal family. There were at least three differences between a daughter’s dowries and a son’s inheritance in the Ancient Near East. First, the former received her dowry-inheritance when her father was

still alive (or designated it when the father was still alive if he was going to die before his daughter's marriage) while the latter received his inheritances upon the death of the father. Second, the former may be less than the latter in terms of value. Third, the former was voluntary, whereas the latter was a legal right to a proportionate share of the paternal estate. A son's inheritance share could only be revoked by a court order. Even so, he could still "retain his rights under certain circumstances even when the property has passed into the hands of strangers" (Westbrook 1991:157).

A dowry in the Ancient Near East was indeed an advanced form of inheritance. It would generally consist of movables such as clothes, jewellery, kitchen utensils and furniture. A wealthy father, especially a king or noble man, could also give his daughter slaves, cattle and in rare instances land or a house (cf. Marsman 2003:95). According to the above law, both sons and daughters (children) would inherit their mother's dowries. A dowry could exceed a woman's 'bridewealth'/bride-price and it was usual for the bride's father to suffer a considerable loss by giving his daughter an expensive dowry (Boecker 1976:102).

LH §§ 172-174 (*COS* 2.131):

If her husband does not make a marriage settlement in her favour, they shall restore to her in full her dowry, and she shall take a share of the property of her husband's estate comparable in value to that of one heir. If her children pressure her in order to coerce her to depart from the house, the judges shall investigate her case and shall impose a penalty on the children; that woman will not depart from her husband's house. If that woman should decide on her own to depart, she shall leave for her children the marriage settlement which her husband gave to her; she shall take the dowry brought from her father's house and a husband of her choice shall marry her (LH §172). If that woman should bear children to her latter husband, only the children of her first husband shall take her dowry (LH §173). If she does not bear children to her latter husband, only the children of her first husband shall take her dowry (LH §174).

The woman/wife in the above clause (LH §172) refers to the first-ranking wife in the preceding clause (§171see above). The reason for her husband not making a marriage settlement in her favour by not giving her any orchard, field, etc, here seems to indicate an intention for a divorce (the husband seeks to divorce his first-ranking wife). In such a case, all the dowries she brought from her father's house would be restored back to her. In addition, "she shall take a share of the property of her husband's estate comparable in value to that of one heir." Legally, she could continue to stay at her husband's house (this could mean she received a house as one of the settlements) and her children may not force her to leave the house. Investigation by the judges and the imposition of penalties indicates that there were cases whereby the children forced their

divorced mother to leave the house.<sup>70</sup> Should the divorced mother decide to leave the house, she would leave the marriage settlement behind for her children. According to this law, the marriage settlement this wife received from her husband is a share of the property of her husband's estate comparable in value to that of one heir. The reason for leaving her marriage settlement for her children could be to prevent the alienation of the patrilineal family land. The dowries she brought from her father's house belonged to her. This law protected the vulnerable divorced wife.

LH §§178 &179 (COS 2.131):

If there is an *ugbaltu*, a *nadītu*, or a *sekretu*<sup>71</sup> whose father awards her a dowry and records it in a tablet for her, but in the tablet that records for her he does not grant her written authority to give her estate to whomever she pleases and does not give her full discretion – after the father goes to his fate, her brother shall take her field and her orchard and they shall give to her food, oil, and clothing allowances in accordance with the value of her inheritance share, and they shall thereby satisfy her. If her brothers should not give to her food, oil, and clothing allowances in accordance with the value of her inheritance share and thus do not satisfy her, she shall give her field and her orchard to any agricultural tenant she pleases, and her agricultural tenant shall support her. As long as she lives, she shall enjoy the use of the field, orchard, and anything else which her father gave to her, but she will not sell it and she will not satisfy another person's obligations with it; her inheritance belongs only to her brothers (LH §§178).

If there is an *ugbaltu*, a *nadītu*, or a *sekretu* whose father awards her a dowry and records it in a tablet for her in a sealed document, and in the tablet that he records for her he grants her written authority to give her estate to whomever she pleases and gives her full discretion – after her father goes to his fate, she shall give her estate to whomever she pleases; her brothers will not raise a claim against her (LH §179).

The above laws are written in the spirit of the Laws of Lipit-Ishtar (LL §22) discussed above. As noted above, dowry in the Ancient Near East was indeed inheritance in disguise. If the dowry-inheritance testament did not specifically stipulate the provision for the alienation of the estate that were given to daughters, brothers would reclaim the estate and provide for their sisters. If the document stipulated the alienability of a daughter's share (inheritance), then she may alienate it if she wished; her brothers would have no say. This could be one of the few examples in which whole or part of the patrilineal estate could be alienated in Mesopotamia (see also LH §§40; 137).

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<sup>70</sup> It is unimaginable in the Marā society for children to drive away their mother from home. Such an act would result in invoking a self-curse.

<sup>71</sup> *Sekretu*, *gadištu*, *kulmašītu* and *šugītu* seem to refer to more or less the same category of temple dedicatees, a group or class of temple dedicatees, with special privileges, sometimes living in cloistered groups (see Roth 1997 [1995]:270, 272, 273).

In the same vein with the Laws of Lipit-Ishtar ((LL §22) discussed above, the above Laws of Hammurabi present a strong case for equal inheritance rights for sons and daughters, especially daughters who have become *nadītus*. Noteworthy is this special group of females. These women (Sumerian *lukur*) had special inheritance privileges and economic freedom along with their brothers. Some groups lived in cloisters or compounds; others married but were not permitted to bear children; (cf. Roth 1997 [1995]: 271). They entered a cloister (*gagû*) on reaching the age of marriage. There they lived celibate lives dedicated to the god Shamash and his consort for their lifetime. Mostly women of means, many were involved in a variety of business activities. Some even became scribal bureaucrats and scholars (Harris 2000:90, 150, 152, 174-175). A societal mechanism adopted by patriarchy prohibited the family land from leaving the immediate family by means of bridal dowries. Thus the dowry awarded to a *nadītu* would revert back to her brother(s) at her death.<sup>72</sup> An interesting phenomenon is that *nadītus* with time seemed to have circumvented this by incorporating a system of adoption, frequently a relative young *nadītu* or a slave, whereby they created for themselves (female) heirs, hence diverting and keeping inheritance within the specific *nadītu* orders (Harris 2000:110, 206 n 30). This is indeed an important societal mechanism for the circumvention of patriarchy and the laws of inheritance and primogeniture in the Old Babylonian period.

### 2.7.2.5 Middle Assyrian Laws on inheritance by daughters and wives

The following laws deal mainly with a widow's position in relation to her husband's properties, her husband's gifts to her, and her own dowries that she brought from her father's house. In some cases the widow was stripped of all her late husband's properties. In other cases, she was awarded some shares.

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<sup>72</sup> See also other related Laws of Hammurabi on inheritance rights accorded to *nadītus* and other special groups of women: "If a father does not award a dowry to his daughter who is a cloistered *nadītu*, or a *sekretu* after her father goes to his fate, she shall have a share of the property of the paternal estate comparable in value to that of one heir; as long as she lives she shall enjoy its use; her estate belongs only to her brothers" (LH §180, *COS* 2.131). "If a father dedicates (his daughter) to the deity as a *nadītu*, a *qadištu*, or a *kulmašītu* but does not award to her a dowry, after the father goes to his fate she shall take her one-third share from the property of the paternal estate as her inheritance, and as long as she lives she shall enjoy its use; her estate belongs only to her brothers" (LH §181, *COS* 2.131). "If a father does not award a dowry to his daughter who is a *nadītu* dedicated to the god Marduk of the city of Babylon or does not record it for her in a sealed document, after the father goes to his fate, she shall take with her brothers her one-third share from the property of the paternal estate as her inheritance, but she will not perform any service obligations; a *nadītu* dedicated to the god Marduk shall give her estate as she pleases (LH §182, *COS* 2.131). "If a father awards a dowry to his daughter who is a *šugītu*, gives her to a husband, and records it for her in a sealed document, after the father goes to his fate, she will not have a share of the property of the paternal estate" (LH §183, *COS* 2.131). "If a man does not award a dowry to his daughter who is a *šugītu*, and does not give her to a husband, after the father goes to his fate, her brothers shall award to her a dowry proportionate to the value of the paternal estate, and they shall give her to a husband" (LH §184, *COS* 2.131).

MAL Tablet A §25 (COS 2.132):

If a woman is residing in her own father's house and her husband is dead, her husband's brothers have not yet divided their inheritance, and she has no son – her husband's brothers who have not yet received their inheritance shares shall take whatever valuables her husband bestowed upon her that are not missing. As for the rest (of the property), they shall resort to a verdict by the gods, they shall provide proof, and they shall not be seized for (the settlement of any dispute by) the divine River Ordeal or the oath.

The text did not specify whether the husband died when the couple was residing at their father's house<sup>73</sup> or whether the widow returned from her husband's house to her father's house after her husband's death. In any case, she was a son-less widow (the text did not state whether she had a daughter) who was now residing at her father's house. In such a case, if she was still young, she would be eligible for remarriage. Since brothers did not divide their inheritance, it would appear that the valuables her husband bestowed upon her were movable properties which would include ornaments, jewellery and expensive clothes. Instead of the brothers-in-law surrounding their widow sister-in-law with concern and care, she instead had to return to her brothers-in-law even mere movable gifts that she received from her husband. This law is in contrast to the female-friendly inheritance laws of Hammurabi.

MAL Tablet A §26 (COS 2.132):

If a woman is residing in her own father's house and her husband is dead, if there are sons of her husband, it is they who shall take whatever valuables her husband bestowed upon her; if there are no sons of her husband, she herself shall take the valuables.

This law seems to be a reconstruction of the preceding one. If the widow had sons, they would take possession of the valuables her late husband gave to her and if there were no sons, unlike the stipulation in the MAL A §25 above, where she had to return all valuables to her brothers-in-law, here she would retain the valuables.

MAL Tablet A §27 (COS 2.132):

If a woman is residing in her own father's house and her husband visits her regularly, he himself shall take back any marriage settlement which he, her husband, gave to her; he shall have no claim to anything belonging to her father's house.

This law could mean either that the husband could take back the marriage settlement (probably immovable properties such as house, orchard, or field) that he gave to his wife if she chose to

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<sup>73</sup> Like biblical Jacob who resided with Laban (Gen 29:1-30:43), it was not an unusual practice for couples, especially newly married ones, to live temporarily (or even for longer periods) with the bride's parents. The same practice existed in the Marâ society.

reside in her father's house. Alternatively he would retain the marriage settlement if his wife died at her father's house where she was residing. In any case, "he shall have no claim to anything belonging to her father's house" including gifts (dowries) his (late) wife received from her father.

MAL Tablet A §29 (COS 2.132):

If a woman should enter the husband's house, her dowry and whatever she brings with her from her father's house, and also whatever her father-in-law gave her upon her entering, are clear for her sons; her father-in-law's sons shall have no valid claim. But if her husband intends to take control (?) of her, he shall give it to whichever of his sons he wishes.

The legal implications of the phrase, "clear for her sons", is not apparent. It may mean that they belong to her sons. Surprisingly, in this law, it is the father-in-law and not the husband, who gave gifts to the bride. For this reason, her bride-gift had to be protected for her own children from her brothers-in-law who may claim it on the ground that they were the legal heirs of their father. The last clause does not make sense. It would have been more logical if it read instead: "But if her husband intends to take control (?) of her, *she* shall give it to whichever of *her* sons he wishes."

MAL Tablet A §41 (COS 2.132):

If a man intends to veil his concubine, he shall assemble five or six of his comrades, and he shall veil her in their presence, he shall declare, "She is my *aššutu*-wife"; she is his *aššutu*-wife. A concubine who is not veiled in the presence of people, whose husband did not declare, "She is my *aššutu*-wife", she is not a *aššutu*-wife, she is indeed a concubine. If a man is dead and there are no sons of his veiled wife, the sons of the concubines are indeed sons; they shall (each) take an inheritance share (COS 2.132: A §41).

This process of making a prostitute with whom the man had children a legal wife was similar to the process of the Laws of Hammurabi where the father made his illegitimate children (born out of a union with a slave woman) legitimate by calling them "my children." This process was indeed very important for the social standing of the woman in question in this clause, and the men in question in the Laws of Hammurabi. The Laws of Hammurabi focused on the children (sons) whereas the Middle Assyrian Law focused on the mother (woman). If the prostitute was officially declared a legal wife in the presence of witnesses, her children could receive a lawful inheritance share from their paternal estate. If, however, she was not made a legal wife, her children would be eligible for inheritance only if their father did not have sons with his lawful wives.

### 2.7.2.6 New Babylonian laws on inheritance by daughters and wives

The following New Babylonian laws (first millennium, ca. 635-539 BCE) mainly deal with the rights of a woman over her own dowry-inheritance.

NBL §9 (*COS 2.133*):

A man who makes an oral promise of the dowry for his daughter, or writes it on a tablet for her, and whose estate later decreased – he shall give to his daughter a dowry in accordance with the remaining assets of his estate; the father-in-law (i.e. the bride's father) and the groom will not by mutual agreement alter the commitments.

This dowry law stipulates that neither the woman's father nor her husband could alter the amount of dowries promised to her by her father, even if her father's estate decreased in bad times. When the time came for collection of dowries, the value of the dowries would be recalculated in proportion to the actual assets of her father.

NBL §10 (*COS 2.133*):

A man gives a dowry to his daughter, and she has no son or daughter, and fate carries her away – her dowry shall revert to her paternal estate.

Dowries were based exclusively on maternal rights. A mother would normally distribute her dowries to her own children. But if she had no child, these would return to her paternal estate, and her husband's side would have no claim.

NBL §11 (*COS 2.133*):

[A wife who ...] fate [carries her away (...)] to a son [...] - she shall give her dowry to her husband or to whomever she wishes.

This clause is not clear. The last phrase seems to be in contradiction with the preceding clause (§10). Here in §11, a wife was permitted to give her dowry to her husband. It could be that, in the former case the wife died before distributing or making a will concerning her dowries, while in the latter event she had distributed while she was still alive. This is a rare indicative of how a woman could dispose of her dowries as she pleased.

NBL §12 (*COS 2.133*):

A wife whose husband takes her dowry, and who has no son or daughter, and whose husband fate carries away – a dowry equivalent to the dowry (which her husband had received) shall be given to her from her husband's estate. If her husband should award to her a marriage gift, she shall take her husband's marriage

gift together with her dowry, and thus her claim is satisfied. If she has no dowry, a judge shall assess the value of her husband's estate, and shall give to her some property in accordance with the value of her husband's estate.

In this case, the husband has taken the dowries of his wife, probably without her consent. In the event of her husband's death, the equivalent of her dowries should be given to her from her husband's estate, plus the marriage gift her husband initially gave to her. If she had not brought any dowries from her father, then, in addition to her marriage gifts<sup>74</sup> a judge would assess the value of her husband's estate, and would award to her some property in accordance with the value of her husband's estate.

NBL §13 (*COS 2.133*):

A man marries a wife, and she bears him sons, and later fate carries away that man, and that woman then decides to enter another man's house – she shall take (from her husband's estate) the dowry that she brought from her father's house and anything that her husband awarded to her, and the husband she chooses shall marry her; as long as she lives, they shall have joint use of the properties. If she should bear sons to her (second) husband, after her death the sons of the second and first (husbands) shall have equal shares in her dowry. [...].

This law stipulates that what has been given to her belonged to her. One interesting development here though, is that her children from her second husband could also receive a share from her first husband's gifts.

NBL §15 (*COS 2.133*):

A man who marries a wife who bears him sons, and whose wife fate carries away, and who marries a second wife who bears sons, and later on the father goes to his fate – the sons of the first woman shall take two-thirds of the paternal estate, and the sons of the second shall one-third. Their sisters, who are still residing in the paternal home [...].

Here preference was given to the sons of the first wife, who were older brothers. It could be that reference to two-thirds and one-third here represent a primogeniture law of the firstborn taking two-thirds of the paternal estate while younger brothers divided the remaining one-third. The sisters who were still residing in the paternal home were probably unmarried sisters. In such a case, the sentence could read either: 'their sisters, who are still residing in the paternal home, would be provided for by their brothers' or 'would be given their shares'.

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<sup>74</sup> Marriage gift or settlement was “a transfer of property which the man made to his wife in the eventuality of his death so that she should be provided for. A sealed document had to be drawn up. The widow's right to the marriage-gift could not be contested even by her children” [Boecker 1976:104].

In sum, in Mesopotamia, there was no evidence of daughters/widows inheriting in the Sumerian periods. But from the Old Babylonian times onward, it would appear that both daughters and widows could also inherit (cf. VerSteeg 2000:97-98; Driver & Miles 1952:324-358; Greengus 1995:469, 478; Stol 1995:485, 494-495).

### **2.7.3 Inheritance by daughters and wives in Egypt**

As noted above, there are no Egyptian law texts; therefore, we do not know whether Egyptian daughters/women had legal rights to inherit. However, Pestman (1961:117-124; 1969:59) discovers that, although normally the firstborn or the surviving oldest son was the main heir, Egyptian daughters could also inherit both from their father and their mother as equal heirs with their brothers.<sup>75</sup> But daughters would normally receive less than sons.<sup>76</sup> A daughter could also be appointed as either sole or main heir or administrator of an undivided property. In return, daughters were expected to take care of their aged parents, especially their aged mother. Failure to shoulder this responsibility would result in forfeiting their inheritances.<sup>77</sup> Although a widow-mother who was made both “father and mother” by her husband was primarily a caretaker of her deceased husband’s estate until her children became adults (cf., Marsman 2003:206 and works cited there), there were cases whereby a son-less father could adopt his daughter as his son (Nuzi) and a childless father could adopt his childless wife as his daughter to make her the sole heir with the power of legal ownership who could sell and buy property. To amend the laws that stipulated “inheritance by sons only” must have been an insurmountable mountain to climb; so it was easier to turn the wife into a father, a daughter, or the daughter into a son.<sup>78</sup>

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<sup>75</sup> A certain Pashad probably did this in the Ramesside period (Marsman 2003:262).

<sup>76</sup> Pestman (1969:65-66) suggests that in actual fact a daughter did not receive less than her brother because she was already given part of her share in advance on the occasion of her marriage.

<sup>77</sup> For example, for this reason, a certain mother of eight, Naunakhte (dated 20<sup>th</sup> Dynasty), disinherited two of her daughters and one son and further partly disinherited one more daughter (Pestman 1961:162-164; Marsman 2003:262).

<sup>78</sup> For example, a certain Nebrofre adopted his childless wife Rennofire as his daughter so that his brothers and sisters would not take his inheritance from her after his death. Rennofire in turn adopted the three children of her female slave. The oldest girl she married to her brother, whom she also adopted. She declared that all four adopted children, two sons and two daughters, were to inherit equal shares. Her brother and the adopted son were to act as trustees and take care of her in her old age (cf. Marsman 2003:207, 299; Pestman 1969:74; Robins 1993:77; Janssen 1996:88). Thus a well-known business woman, one Tulpunnaya, was adopted several times in the course of her numerous real estate transactions (cf. Marsman 2003:393).

One very interesting phenomenon concerning inheritance in ancient Egypt was that, although husbands and wives did not inherit from each other, the wife was not without inheritance. Both husband and wife inherited separately from their families. Thus an Egyptian woman was financially quite independent. In addition, often Egyptian marriage contracts contained clauses on the care for the widow:

And I shall not be able to say: I have other wife besides Mipta(h)iah and other children besides the children whom Miptahiah shall bear to me. If I say: "I have other chi[dren] and wife besides Miptahiah and her children," I shall give to Miptahiah silver, 20 *karsh* by the stone(-weights)s of the king. And I shall not be able to RE[LEASE] my goods and my property from Miptahiah. And I should remove them from her (ERASURE: in accordance with [this] document but), I shall give to Miptahiah [silve]r, 20 *karsh* by the stone(-weight)s of the king (*COS* 3.63: lines 32-36)

This first millennium (ca. 500 BCE) Egyptian Aramaic marriage contract dealt with the widowed Mibtahiah and her remarriage. Although widowed, she may not be courted directly, but only through her father. The Egyptian royal builder Eshor approached the father of his desired bride. The thrust of this and similar wifhood documents was the guarantee of the bride's pecuniary rights during the marriage and in case of repudiation by, or the death of, her spouse (Porten 2002:153). The central focus of the contract was the exclusion of other heirs.<sup>79</sup> In the contract, the husband testified on oath that he would not have other heirs besides Mibtahiah's children. If he did, it would cause him heavy fines. The contract also gave the widow, who would now become his wife, a strong say in the affairs of her would-be husband's estate: "And I shall not be able to RE[LEASE] my goods and my property from Miptahiah." Eshor was prohibited from alienating the family estate without the consent of his wife, Mibtahiah. Similarly, a document from Amnamahet III stated that the woman was to determine who should be the heir (Brin 1994:255).

Normally, the oldest son was the father's heir in Egypt. However, by the Middle Kingdom, the right of inheritance was frequently transmitted through the female lines – the son of the oldest daughter received the inheritance (Bergman & Ringgren 1975:145-146). The irony here though is that it was not the oldest daughter of the oldest daughter who was appointed heir apparent; but it was the son (probably the oldest son) of the oldest daughter.

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<sup>79</sup> An ancient Greek marriage document also stated, "Let it not be permitted to Herakleides to bring in another woman as an outrage to Demetria, nor to have children by another woman ..." (Porten 2002:154 who quotes P. Eleph. 1.8-9 [EPE D2]).

## 2.7.4 Inheritance by daughters and wives in Syro-Palestine

### An Alalakh court case on daughter's inheritance (sister suing her brother)

*Dispute:* Concerning the estate of a Ammurabi's wife: Abbael has brought a suit against his sister Bittatti, [As follows: "It [is (all) mine.] Bit[ta]tti, you are not reckoned (an heir) in this house." [B]ittatti [replied as follows:] ...in the town of Suharuwa, [with]my [m]other I am reckoned (as an heir). [W]hy have you taken the extra share (of the estate)? Let us divide your father's estate equally (lines 1-12).

*Petition:* They considered the matter before king Niqmepa. Abiadu testified before king Niqmepa that Bittatti has a share of the estate (lines 13-18).

*Decision:* The king replied as follows: Let Abbael choose and take from the estate the property that he wants. The property that he rejects, Bittatti shall take. Thus the king replied (lines 19-24).

*Enactment:* Gimil-Addu and Niwariadu of the throne were sent to the estate to be divided. Abbael chose and took the upper property which was the upper storey. He gave the lower property to Bittatti his sister. It shall never again be changed. Abbael shall not claim against Bittatti's portion of the estate nor shall Bittatti (claim) against Abbael. Whoever should claim must pay five hundred gold shekels to the palace and forfeit their portion of the estate (lines 25-41) (COS 3.129).<sup>80</sup>

The above verdict of the Alalakh court case seems to demonstrate that daughters could also receive inheritance shares alongside sons. This court case from Alalakh resolved an inheritance dispute between Abbael (brother) and Bittati (sister) before the royal court. Bittati's statements, "in the town of Suharuwa, [with] my [m]other I am reckoned (as an heir). [W]hy have you taken the extra share (of the estate)? Let us divide your father's estate equally" are interesting. These statements seem to imply that her father had reckoned Bittati as an heir together with her brother Abbael. The phrase, "[with] my [m]other" could mean either the widow too was regarded as an heir or she too knew (witnessed) about Bittati being regarded as an heir. In appealing for an equal share from the estate, Bittati, the sister addressed her brother using the second person "your father's estate" instead of the first person "our father's estate." If we analyse the two phrases, "[with]my [m]other" and "your father's estate", together, there is a possibility that Bittati was not the biological daughter of Abbael's father, and she may have been his stepdaughter. What she claimed, therefore, was not her own inheritance right, but a gift her stepfather had given to her mother (his wife). But the two could also have been brother and sister of the same father and mother. She could simply use the second person, "your father's estate", as recognition of Abbael her brother as the sole/principal heir of their father.

<sup>80</sup> The enactment is followed by a list of witnesses (lines 42-46) and date.

The disputed property seemed to be exclusively a house (not a field or orchard). Her father might have said that his son and daughter would divide his two-storey house in question, but the former refused to honour his father's words. The royal court was apparently convinced and divided the property equally between the brother and sister. Even if it was an isolated and exceptional case because of the decision had to be made before the leader of the nation and the disputed property was exclusively a dwelling place, not a field or orchard, the fact that the sister was given an equal share of the property is significant.

In case of sonlessness, daughters could inherit in Syro-Palestine. A sonless father could write a legal document to bequeath his property to his daughters<sup>81</sup> (Marsman 2003:717; Porten & Yardeni 1986-99 Vol 2: B3.7; B3.10; B3.11). Widows could also obtain usufructary rights, which generally had to be recorded in a legal document (Marsman 2003:696).

### **2.7.5 Summary observations on inheritance by daughters and wives in the Ancient Near East**

From the above textual evidences, it is possible to make the following summary observations on inheritance by daughters and wives in the Ancient Near East. Although women's status in relation to inheritance and succession differed from place to place and changed with time, sons rather than daughters were normally legal heirs, with the firstborn son inheriting the prime estate and succeeding his father as the head of the family. The reason for this was that sons stayed, but daughters left home upon marriage. In addition, the patrilineal family land and name had to be preserved. Thus daughters who had joined other families/clans upon marriage could not be given an inheritance share in the patrilineal estate, as that would mean bringing aliens to the family land.

However, as noted above, there are exceptions to the rule. Considerable texts analysed above indicate that a daughter – regardless of whether she was married or not – could also be given an inheritance share together with her brothers. This was especially the case in Egypt, which appeared to be more generous and considerate to the plights and rights of women than other Ancient Near East societies. An unmarried daughter, especially in Mesopotamia, was entitled to either a dowry-inheritance, especially if she had joined the religious (temple) service. However,

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<sup>81</sup> This provision is similar to that of the case of the daughters of Zelophehad (Num 27:1-11; Jos 17:3-6).

because daughters did not normally inherit, their father had to attest to the foregoing in a sealed document so that their brothers would not claim their inheritances.

A sonless man could give his estate as inheritance to his daughters either by adopting them as sons or writing a legal document bequeathing them his property. In other cases, a sonless man would give his daughter in marriage to his adopted son or adopt his son-in-law as his son, thus making his daughter a joint heir. A childless widow could inherit from her deceased husband through adoption by him as his daughter (“son”). She could in turn adopt children who would inherit from her. A widow with young children could be made both mother and “father” to have legal custody over her children, run the affairs of her husband’s estate, and live there for the rest of her life. But this was only a life estate and as such she could not alienate it; her own children would inherit the estate upon her death.

A woman's dowry-inheritances (given to her by her father) and marriage settlement (given to her by her husband or father-in-law) belonged to her. Her dowries were inherited by her own children, including children from her previous marriages. As for a childless wife, upon her death her dowries (*šeriktum*) were returned to her father who in turn returned her ‘bridewealth’ (*terhatum*) to the widower (his son-in-law) or his heir. A wife was the legal owner of a sealed property she received from her husband as a marriage settlement/gift (*nudunnû*). However, she could not sell this property to outsiders, and she was legally bound to distribute it among her children or bequeath the whole property to any child she chose.

Women in the Ancient Near East were economically well protected in the event of divorce<sup>82</sup> or childless widowhood in terms of *šeriktum* and *nudunnû*. Daughters’ inheritance, be it from their father or mother, was tied with the responsibility to take care of their parents when they grew old. A mother (and father) could disinherit any of her/his daughters who failed to take care of her/them in their old age. Queen mothers exercised tremendous power and influence;<sup>83</sup> women could own, sell and buy properties (cf. Marsman 2003:396, 399); and daughters and widows could inherit. These indicate that patriarchy in the Ancient Near East was not a static principle that had to be

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<sup>82</sup> Upon divorce (normally initiated by the husband) the divorced woman took her dowries away with her unless the reason for divorce was because of grave offences on the part of the wife, such as adultery, in which case she would forfeit both her dowries and marriage settlements/gifts.

<sup>83</sup> Queen mothers could even transfer/alienate a man’s property without his consent (Marsman 2003:723 and works cited there).

followed throughout generations, but a historical-cultural phenomenon which could be changed and modified.

## 2.8 CONCLUDING REMARKS

We have now made summary observations for each of the three themes discussed. From these observations, it is possible to draw the following synthesised and comparative conclusions concerning primogeniture in the Ancient Near East:

### 2.8.1 Primogeniture as socioeconomic responsibilities

Apart from the general dominating tendency of men over women (see Goldberg 1977), older people over younger ones, and wealthier people over poorer ones, ancient hunter-gatherer, cattle-herding, and agricultural familial and societal life naturally resulted in the practice of patriarchal familial system, as men were generally regarded as physically stronger and so were expected to perform difficult tasks. Hunting-gathering, cattle-herding and agricultural works were thus naturally regarded as men's task while household chores were exclusively assigned to women. The Ancient Near East societies were no exception.<sup>84</sup> The harsh economic obligations placed the eldest son, the first to reach maturity, as second in rank to the *pater familias*. In case of the father's early death or incapacitation, the eldest son would immediately shoulder the economic responsibilities of the family. Thus, by virtue of that position, the firstborn or eldest son was considered entitled to special prerogatives when the brothers divided up the family estate.

The exclusive take-over of the entire estate by the firstborn son was not explicitly attested in the Ancient Near East although some texts could imply it. With the increase in population, family properties became diminished in size. Thus some family lands (inheritances) were too small to be economically viable if these were divided up among the brothers (and sisters). In such a case, the entire estate would be inherited by the eldest son and his younger brothers would be his tenants until they acquired adequate lands for themselves. In other cases, the estate would be kept as a joint family property of all the brothers, with the eldest son as its administrator. In certain cases,

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<sup>84</sup> But see Ruether (1997:631) who contends that the tasks of gathering and agriculture were not confined to men alone in the ancient societies; women also took part in these tasks. She argues that ancient tribal societies that were strictly patriarchal seemed to have been those nomadic animal-herding societies which lacked a major female gathering and gardening role. Thus the patriarchal familial cultural system seemed to have developed in the ANE as a result of the nomadic animal-herding tribes' invasion of the settled agricultural areas.

the firstborn son or any favoured son would take the undividable property, often land, and other brothers would divide the movable property or dwelling places (houses).

The family land was associated with one's clan (kinship) and family name. It was also a place where ancestors were buried and worshipped. Thus, in order to protect the family property from alienation and for the family name to continue with dignity, the prime estate was normally inherited by the firstborn son or sometimes by a favoured son. Being a widow, orphan, or poor entailed becoming socially vulnerable and a shame in the Ancient Near East. Thus, when the eldest brother took the position of *pater familias*, his widow mother and sister, orphan younger brothers and sisters, his brothers and sisters who could not economically stand on their own feet, were all protected from social shame.

### **2.8.2 Women's status and position in the Ancient Near East**

A comparison of the different Ancient Near East societies with ancient Israelite society would be helpful to understand women's status and position in the Ancient Near East. There have been various scholarly comparisons between women of different Ancient Near East societies and women of ancient Israel with other Ancient Near East societies. Some scholars, for example Claude Schaeffer, Jean Nougayrol, and Eleanor Amico (see Marsman 2003:34-35), postulated that the position of women in Syro-Palestine, especially Ugarit, was better than the position of women in Mesopotamia. In Syro-Palestine itself, the position of women Ugarit was portrayed as better than the position of women in ancient Israel. If that is true, it gives the impression that women's position in the polytheistic Ugarit, or for that matter in other Ancient Near East societies as well, was better than in the monotheistic Israel. But our textual surveys above indicate that women's position in Ugarit, Ancient Near East, and Israel were more or less the same. In some areas, the position of women was better in Ugarit than Israel; in other areas the converse was true. For example, the queen and queen mother were very powerful women in Mesopotamia and Syro-Palestine, which was not the case in Egypt (see also Marsman 2003:696-699).

Queen mothers enjoyed considerable social freedom and authority in Ugarit, but for lack of data it is difficult to ascertain the situation in Israel. A slave woman was released upon marriage in Ugarit which was not the case in Israel. Women could serve as religious specialists (the queen fulfilled a role in the cult and a princess could lead a life of dedication to a deity) in Ugarit, but no such data exist *vis-a-vis* Israel. Based on evidence from seals with royal emblems owned by women, women

may have played a certain role in the royal administration in Israel, but such a situation was not attested in Ugarit. Several women in ancient Israel owned seals which they used in correspondence and business enterprises but this was not the case in Ugarit (Marsman 2003:696-699).

Women could inherit and own properties. However, in the daily familial and social life, they lived under male dominance. One area in which patriarchy seemed to have had a strong manifestation in the gender dimension was in regard to women's identities. The Ancient Near East woman did not have her own identity; she was defined in relation to her men-folks. The following Middle Assyrian Law would suffice to illustrate the dark side of patriarchy; patriarchy at its worst. The law in question stipulates the punishment of the innocent wife in the place of her husband who had raped a virgin. This was done because she was treated as the property of her husband, not a free individual in her own right. The poor wife of the virgin-rapist had to be in turn raped by the father of the raped virgin:

In the case of ... a virgin who was living in her father's house ..., if a seignior took the virgin by force and ravished her, ... the father of the virgin shall take the wife of the virgin's ravisher and give her to be ravished; he shall not return her to her husband (but) take her... (MAL Tablet A: §55; cf. *ANET* 185a).

In the final analysis, it is difficult to make an informed conclusion concerning the status and position of women in the Ancient Near East. It is easy, based on a few textual examples, to elevate the Ancient Near East women's position and liberation higher than they really enjoyed. It is also easy to represent the oppression and exploitation of women in the Ancient Near East as being worse than they really experienced. In general, we could conclude that women of Ancient Near East experienced a certain degree of abuse, oppression, and exploitation, thanks to the patriarchal ideology of the society. With that assumption, the texts analysed above represented some kind of ambiguity concerning the status and position of the woman in the Ancient Near East. She was free, yet restricted; she was adorned, yet abused; she was strong, yet weak and vulnerable.

### **2.8.3 Primogeniture system for political stability**

Primogeniture is in essence equal to hegemony and power. If there were no authoritative figure to which members of the family and citizens of the country had to submit, there would be chaos in the family and society. If there were no rules and traditions to follow for inheritance and succession, there would be a great deal of strife in the family and palace (kingdom). Thus the

tradition/rules of primogeniture prevented familial and royal strifes, and also provided continuity and security in the dynasty and the kingdom.

#### **2.8.4 Primogeniture tradition was dynamic**

Primogeniture custom was practised differently from one region to another and was subject to change according to socio-economic and political climate of the time. The changes of economic systems, from that of semi-nomadic agriculture to large city-state based urban economy in the Ancient Near East, especially in Mesopotamia and Egypt since the turn of the second millennium BCE, resulted in the gradual reduction of the role of the eldest son. Hence no direct reference was made to the prerogatives of the firstborn son in the Laws of Lipit-Ishtar and later the Laws of Hammurabi, or in the Egyptian texts, although there are some allusions to this element. However, the old tradition of according a privileged status to the firstborn son remained in force in the less industrialised and commercial communities such as Nuzi, Middle Assyria, and Syro-Palestine.

The Middle Assyrian Laws discussed above clearly affirms primogeniture. The prerogatives of the firstborn son were also attested in Nippur. The eldest son (Sumerian ŠEŠ.GAL=Akkadian *ahum rabûm*) would receive “an additional share” (Sumerian SÍB.TA = Akkadian *elâtum*) from the inheritance over and above his younger brothers. The contemporary texts from Larsa, although did not employ the technical term “additional share,” clearly indicate that the eldest son inherited a larger share (often amounting to a double portion) than his younger brothers - and sisters (cf. Mendelsohn 1959:39-40).

A double portion inheritance for the firstborn in the Middle Assyria may have been a result of one of the followings. During the pre-industrialisation and urbanisation, the entire estate usually went to the firstborn, the prime heir. However, with industrialisation resources became increasingly scarce, so that it became difficult to obtain new lands for all the brothers. Thus the paternal estate was divided equally among the brothers, with a double portion going to the firstborn as recognition of his status as the prime heir. Alternatively, the estate was normally divided equally among the brothers even prior to industrialisation and urbanisation, with the prime plot going to the firstborn and prime heir. However, with industrialisation and urbanisation, the area of land owned by individual families may have been drastically reduced. Because of this, an equal division could result in even dividing up the prime plot. Thus, the firstborn, the prime heir was given a double portion so that the prime plot of the paternal estate may not be divided

Primogeniture was a common custom for royal succession in all the regions of the Ancient Near East (Mesopotamia, Egypt, and Syro-Palestine). The firstborn son normally succeeded his father. However, as noted above, the custom was often not followed. The violation was usually legitimated by the gods. The above changing nature of inheritance and succession rules indicates that primogeniture was not a static blueprint, but a dynamic historical and theological phenomenon.

### **2.8.5 Theological significance of primogeniture**

As discussed above, the prerogative of the firstborn son was accorded by the gods themselves in the mythical assembly in heaven (Mesopotamia). Pharaohs, normally the firstborn sons in the dynastic Egypt, were regarded as semi-divine. The Mesopotamian laws, including laws concerning primogeniture, were presented as given by the gods. When primogeniture was not followed in royal succession, special oracles legitimising the younger brother's ascension to the throne were normally sought. Mythical and theological significance of the firstborn sons was also attested in cultic practices of sacrificing them to the gods who demanded the best. The firstborn or any favoured son who inherited the prime estate, that is, the family office and titles, inherited the family god as well. This shows that primogeniture was not purely civil (economic, social, and political) phenomena, but also had strong religious connotations.

### **2.8.6 Primogeniture as a cornerstone of patriarchy in the Ancient Near East**

Our textual surveys above indicate that patriarchy in one form or another was generally attested in the societies of the Ancient Near East. Normally, daughters could not inherit. Sons were legal heirs and successors. Within the system of inheritance and succession by sons only, the prerogative of the firstborn son (primogeniture) was widely attested in the entire Ancient Near East societies, except in Elam. Apart from the mythical, biological, and social significance of the firstborn son, primogeniture had a civil purpose as well. It underlay the unity, integrity, and continual survival of the patriarchal family and its name, continual holding of the family land, and fulfilling the *pater familias* responsibilities. Over the years, this social system of primogeniture seemed to have developed into a type of privileged office or ideology. Thus a father could have this office occupied by any son he favoured, which Mendelsohn (1959:40) describes as the idiosyncratic character of the Ancient Near East laws. However idiosyncratic it may sound, one thing was clear: the firstborn as an office was intact. Although the one who occupied the firstborn

office might not necessarily be the biological firstborn son, anyone who occupied had to fulfil all the responsibilities of the firstborn son. All these observations indicate that primogeniture was a strong manifestation and cornerstone of patriarchy in the Ancient Near East.

### **2.8.7 Exception to the rules of primogeniture**

As noted above, although daughters were normally excluded from inheritance and succession, there were clear exceptions to the rule. Women (daughters/wives/widows) could also inherit and own properties. A younger son other than the firstborn son could also be made prime heir to succeed his father as the head of the family or as king (royal succession). The fact that primogeniture tradition/rule was not often followed demonstrates that patriarchy in the Ancient Near East was not a static principle which was immune to change, but rather a dynamic historical-cultural process which was subject to change, modification and adaptation according to the socio-economic and religious-political changes of the society.

We also noted that, while other Ancient Near East societies were generally patriarchal, the Elamites were matrilineal and matrilocal. Inasmuch as some patriarchal societies then and now believe that patriarchy is the way a society should be, the Elamites too could as well present a strong case for matriarchy as the way a society should function. The Khasi and Jaintia people groups in North East India too are matrilineal and matrilocal societies. All these exceptions and differences indicate that patriarchy cannot be used as a divinely sanctioned blueprint for all societies of all generations. It was a historical-cultural process that had developed into a patriarchal ideology over a period of time (see Chapter Four).

Above, we have identified and analysed representative texts relating to inheritance and succession in order to understand the practice of primogeniture custom in the Ancient Near East. Our next task is to study primogeniture in the Old Testament. As stated in the beginning of the present chapter, there are striking similarities between the Ancient Near East texts and the Old Testament concerning primogeniture. Deuteronomy 21:15-17 assumes its original audiences to have known and understood the tradition of primogeniture. Thus the legal corpuses and narratives of the Old Testament do not provide extensive information relating to primogeniture, except a brief instruction on a two-third portion inheritance rights for the firstborn son in Deuteronomy 21:17 and narratives that refer to the firstborn's succession to the royal throne. The present chapter will provide supplementary or even missing information as we study primogeniture in the Old

Testament in chapters that follow. Before we study primogeniture in the Old Testament, it is important to first review recent scholarly opinions on the subject. We shall attempt this in the next chapter.

## Chapter Three

# A REVIEW OF RECENT SCHOLARLY OPINIONS ON PRIMOGENITURE IN THE OLD TESTAMENT

### 3.1 INTRODUCTORY REMARKS

The purpose of this chapter is to understand what has been written before on primogeniture in the Old Testament in order to identify conspicuous *lacuna* and areas where this research may prove useful. Considering how the firstborn is a central theme of the Old Testament, it is surprising to see lack of interest on the subject. We have a few journal, dictionary and encyclopaedia articles on the firstborn. Some commentators make passing comments on primogeniture in their commentaries on the Pentateuch or Deuteronomy. Others include it in their study of ancient Israelite society. The law of primogeniture is also used as a test case for the study of biblical laws.

Recently, Gershon Brin assigns a substantial space for the study of the law of the firstborn in his outstanding work, *Studies in Biblical Law: From the Hebrew Bible to the Dead Sea Scrolls*.<sup>1</sup> Other scholars who include the subject of the firstborn in their studies on the ancient Israelite society include Shunya Bendor (1996) who studies the role of the firstborn in the *ba tyb*, Paula McNutt (1999) who attempts to restructure the society of ancient Israel, and King & Stager (2001) who studies life in the biblical Israel. Carmichael (1985) analyses the relationship between the laws (Deuteronomy) and narratives using the law of the firstborn as one of the case studies, while Westbrook (1991) studies the law of the firstborn within the property and family in the biblical law. On his part, Syrén (1993) compares different motives and motifs in the narrative for displacing the firstborns in favour of the younger brothers. Mendelsohn (1959) and Greenspahn (1996) also write interesting journal articles on primogeniture. These are the main scholarly works that will be reviewed in this chapter along with other important works on ancient Israel and books, articles, and

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<sup>1</sup> Brin's interest in the firstborn began with his doctoral dissertation entitled "The First-Born in Israel during the Biblical Period" (Tel Aviv University, 1971) and culminated in his most recent work (1994), *Studies in Biblical Law: From the Hebrew Bible to the Dead Sea Scrolls* translated by Jonathan Chipman. The second half of this 1994 outstanding work is attributed to the firstborn. Beginning with his dissertation, Brin's other publication on the firstborn includes "The Transfer of Family Hegemony and the Problem of the Title Bekor", *ha-Zevi Yisrael: Sefer le-zekher Braude* (Tel Aviv: Mifalim Universitai'im, 1976, 47-55) (Hebrew) and "The First-Born of the Mother and the First-Born of the Father in Scripture", *Sefer Ben Zion Luria* (Jerusalem: Kiryat Sefer, 1980, 31-50 -Hebrew), which have been gathered in his book, *Issues in the Bible and Dead Sea Scrolls*. This researcher was unable to access these works. Thus our review of Brin will be based mainly on the 1994 publication (ET).

commentaries on Deuteronomy 21:15-17 where the law of primogeniture is stipulated as well as primogeniture texts in the narratives that interestingly contradict the former.

Methodological consideration for this review is that of a thematic analysis, other than reviewing author by author, owing to the overlapping of themes studied by different scholars. We will not comment on all the nuances of the primogeniture text of Deuteronomy 21:15-17 in this review, as this is the main text and study for the next chapter. Our aim in this chapter is to review significant and interesting hypotheses of different scholars on primogeniture. For consistency, continuity, and coherence, the thematic outline for our literature review in this section then would largely follow the themes of the previous chapter. As stated in Chapter One, one of the main tasks of this research is to study possible links between primogeniture and patriarchy in the Old Testament. The life-setting of the primogeniture custom in the Old Testament is the ancient Israelite patriarchal family. Therefore, it is important to study the nature and composition of the Israelite family first in order to understand the custom of primogeniture better.

### 3.2 NATURE AND COMPOSITION OF THE ISRAELITE FAMILY

The Hebrew *ba tyb* (father's house) is commonly rendered as the extended family. The term itself expresses the patriarchal nature of the ancient Israelite family. According to Shunya Bendor (1996:49-66), the *ba tyb* was an extended family composed of three or four generations – father, sons and daughters both married and unmarried, grandchildren both married and unmarried (and great grandchildren) and when a *ba tyb* became large, it broke into several smaller families which combination resulted in the creation of a new clan [*hxpvm*] (see also Rogerson and Davies 1989).<sup>2</sup> In the same vein, Westbrook (1991:12-14) defines the Hebrew word *tyb* (house/family) objectively referred to as *ba tyb* (father's house) when it included the head (father) as a single *family* composed of up to three generations (father, children, and grandchildren) (Gen 7:1, 7; 47:12). Members of the family lived together in a cluster of *dwelling* sharing the same family *estate* (Gen 31:14; Mic 2:2) representing a socio-economic reality of the Israelite settlements.

Gottwald (1999 [1979]:285-292) distinguishes the Hebrew family [*ba tyb*] from a larger social unit such as a tribe, dynasty, or ancestry which were fictitiously conceived as a *tyb* (house) or a *ba tyb*

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<sup>2</sup> A large family would include a single living male ancestor, his wife/wives, the man's sons and their wives, grandsons and their wives, and conceivably even great grandchildren; any unmarried male or female descendants (married female descendants were excluded, having left the household to live with the families of their husbands) and unrelated dependents; male and female hired servants and slaves, along with their families; resident labourers; and on occasion resident Levites (Jdg 17:7-13) (Block 2003:38).

(See also Stager 1985:18-23; King and Stager 2001:36-40). Gottwald (1999:287) then defines the Hebrew family [ba tyb] as

the functional living unit gathered around a family head at any given moment, and it was, in a narrower and more definable sense, the lineage – i.e., all the biological descendants of a known common ancestor (distinguished from a fictitious ancestor), thus distinguishable from members of the living group who participated by marriage or by adoption or by incorporation.

For Gottwald (1999:287), the father, the oldest living male of the lineage, of a ba tyb as a living group was not the founder of the ba tyb, but only its head for the time being. Upon his death, his position would devolve upon his eldest son. In the same vein, Matthews (1988:67) explains that an ancient Israelite man “determined his lineage first by his father, then his clan, his tribe, and finally (if at all) by his people.” Bendor (1996:121-204) understands the internal dynamics of the ba tyb as a complex community. Within the ba tyb, there were several “nuclear cells” or “domestic units” engaged in a dynamic relationship with each other to redistribute its flocks, vineyards, and fields (see also Benjamin 1998:517). Milgrom (1976:337) affirms that the importance of the firstborn son in the family was attested in the genealogical lists, even if the genealogical line was given for all the sons (1 Chr 6:16-19 [Hebrew 1-14]). In so doing, the family line was continued through the firstborn, even if other sons were named (1 Chr 7:1-4). In other texts the firstborn was the only one named (Gen 11:12-13). Daughters, even firstborn daughters, were listed at the end (1 Sam 14:49). More significantly, the status of the firstborn was indicated by the formula “father/mother/brother/sister of” (Gen 36:22), indicating that he was the base of references for the rest of the family.

On her part, McNutt (1996:216-217) argues that, although it is commonly accepted that the primary units in the ancient Israelites social organisations were the ba tyb, hxpvm, jbv/hjm because that is what they are called in the biblical texts, it is difficult to give a clear answer as to whether the Old Testament ba tyb referred to the nuclear or the extended family. It is also difficult to conclude whether hxpvm<sup>3</sup> referred to the extended family, the clan, or the lineage. The Bible does not provide explicit evidences and, therefore, it is difficult to provide clear definitions what these terms may have meant, and what their composition and interrelationships may have been, in the minds of the people and the writers who used them throughout the course of Israel’s history. However, analysing

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<sup>3</sup> There has been some discussion on definitions and explanations of the term hxpvm: “the protective association of families” (Gottwald (1999 [1979]:257); “residential kinship group,” or “kin group” (Collins 1997:13); “kin group” (Wright 1991:48); “sub-tribe” (Fachhai 2007a:130). Many continue to use the traditional renderings of it as either “family” or “clan.” The jury is still out.

the ways in which societies at similar stages of development were organised, McNutt postulates the following possibilities:

In the Iron Age I, the plan and layout of the houses at highlands sites, which often shared a common courtyard with other dwellings, perhaps represented the extended family [ba tyb] mentioned in the biblical texts. Each dwelling on the compound probably housed a nuclear family. The entire village, with perhaps a dozen of these cluster buildings, may have comprised the biblical kinship group [hxpvm] mentioned in the texts. Each ba tyb was autonomous, producing its own economic necessities, cultivating and harvesting its own fields, and selling its surplus produce if there was any (McNutt 1999:66-67, 72).

From the archaeological record of clusters of two to three houses sharing the same courtyard, indications are that the extended family [ba tyb] of the Iron Age I probably continued to the Iron Age II as well. The extended family also continued to be the primary socioeconomic unit up to the Iron Age II (McNutt 1999:166-167).<sup>4</sup> Since they could no longer live according to their respective ba tyb in exile, the primary post-exilic kinship group became the tba tyb (house of the fathers) other than ba tyb (house of the father). McNutt (1999:201-202) explained the ideology of the post-exilic tba tyb as follow:

Only those able to trace their genealogy back to the family of Jacob – that is, to those who were removed from the land and were in exile – constitutes the true “Israel,” according to this biblical construct. Family, or genealogy, was thus a means to legitimating status and the power structure in postexilic community organization. Because those who had been in exile were the ones who could trace their genealogy back to the patrilineal name “Israel,” they were entitled to membership in the restored community. Ability to demonstrate inclusion within the tba tyb was a requirement both for membership and for defining the group’s character (researcher’s Hebrew words).

On his part, Collins (1997:105-107) asserts that the post exilic tba tyb (fathers’ house) was different from the traditional ba tyb (which he renders as “family household”). Appearing some sixty-five times in Ezra-Nehemiah-Chronicles, as against six times in the Deuteronomic History, the term tba tyb referred to large units of eight hundred to one thousand adult males and appeared to take the place of the traditional hxpvm (clan) rather than the ba tyb. One function of these groups was genealogical. They established lines of continuity, whether real or fictitious, between exilic/post-exilic and pre-exilic Israel (cf. Ezr 2:59-63; 10:16); see Collins 1997:105).

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<sup>4</sup> But see Meyers (1992:250-251; 1988:186-196) who suggests that during the monarchical period of the Iron Age II there was a shift of the Israelite society from rural setting to an urban setting. As a result the urban Israelites began to live as nuclear families having fewer household economic (farming) activities.

Based on the above discussions, we could possibly summarise a scholarly consensus on the nature and composition of the *ba tyb*. The *ba tyb* (extended patriarchal family) in ancient Israel, according to the Old Testament, was the first and smallest, but most active and fundamentally powerful social structure. It was also an important socio-political-religious institution within the overall sequence of ancient Israel's kinship or social units of *ba tyb* (family), *hxpvm* (clan), *jbv/hjm* (tribe), and *ywq* (nation) or *~[* (people) (see Perdue 1997a:174-178 for summary explanations of these units). King & Stager (2001:4-5) uses the Hebrew *~[* (kindred) to describe the last or largest unit in the sequence of ancient Israel's kinship or social units. However, although *ywq* (nation) is more of a political terminology than the description of social unit, the implication of both *ywq* (nation) and *~[* (people) are more or less the same. Thus the two are interchangeably used in this research.

### 3.3 PRIMOGENITURE IN FAMILY INHERITANCE

The accordance of prerogatives to the firstborn son was attested in the division of the family land/inheritance [*hl xll*] as well as in the administration of the family land in the case of brothers jointly holding their patrilineal family as undivided land. Bendor (1996:176-178) argues that for the continual survival of the *ba tyb* kinship<sup>5</sup> structure and the continual holding of the family land by the *ba tyb*, whether divided or undivided, the prerogatives of the firstborn son were usually maintained and primogeniture became acknowledged and an accepted fact (see 1 Ki 2:15; 2 Ki 2:22). According to Bendor (1996:171), there were three possible ways of dividing the land of a *ba tyb*:

*Possibility 1:* The *hl xll* was divided among all the brothers. This possibility, if repeated every two or three generations, was liable to bring about an extreme fragmentation of the *hl xll* to the point that

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<sup>5</sup> Weber (1952) and Alt (1927, 1930) argue that the development of Israel as a monarchical state and its city social structure based on land ownership (*latifundia*) (1000-587 BC) have resulted in the breakdown of village farming social structure of ancient Israel that was based on the kinship relationship (1250-1000 BC). Bendor (1996:33) disputes this thesis and argues that the kinship system [*ba tyb* and *hxpvm*] survived the monarchical history of Israel and Judah and served as the "backbone that maintained the society as a free and healthy productive society." According to Bendor (1996:219-20, researcher's Hebrew words; he uses transliteration), "the monarchy itself was based on the kinship structure. *\$l mh tyb* (the king's house) was itself a *ba tyb/hxpvm* and its functioning relied upon this structure. The burden of taxes levied by the monarchy was imposed on the kinship group" (see also Blenkinsopp 1997:85-92 for the effects of the establishment of a monarchical state on the Israelite families)

its portions would no longer support any of the units in the *ba tyb*, unless new land was made available.

*Possibility 2:* There was a distinction between brothers who inherited and brothers who did not, but would be “called by the name of their brothers”<sup>6</sup> (Gen 48:6). In principle such *hl xñ* was also liable to undergo extreme splitting, but the differentiation between the inheritors and those “called by the name of their brothers” acted as a brake that might be renewed from generation to generation in keeping with the state of the *hl xñ* and the *ba tyb*.

*Possibility 3:* The brothers opted for a minimal division, that is, they did not divide among themselves all that was included in the *hl xñ* of the *ba tyb*. The *hl xñ* that was not divided remained as the inheritance of the original *ba tyb*. The firstborn brother (or another brother as leader) served as the head of both his brothers and their sons. This is perhaps expressed in the text “If brothers dwell together ...” (Deut 25:5).

The priority of the firstborn is clearly evident in all the above three possible ways of dividing or not dividing inheritance. Based on possibility 2, Bendor (1996:177) interestingly argues that it may be no accident that the inheritance law in Deuteronomy 21:15-17 was presented between two sons only. Drawing an inference from the large number of instances in which ‘firstborn’ (head, first, and the like) and ‘second’ [*ñvm*] appear together, in some cases *ñvm* indicating an office holder (1 Sam 8:2; 17:13; 23:17; 2 Sam 3:2-5; Neh 11:17; 1 Chr 5:11-13; 2 Chr 31:12), Bendor suggests that perhaps it was common to divide the *hl xñ* between these two sons alone in keeping with the fixed ratio set down in Deuteronomy 21:15-17. In the event of such a division of the *hl xñ* of the *ba tyb*, the other sons would have the status of ‘called by the name of their brothers in their inheritance,’ in the inheritance of the firstborn and of the second. If and when the firstborn [*rakb*] would relinquish his primogeniture [*hrkb*], this was likely to fall to the brother who was next in line [*ñvm*].<sup>7</sup>

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<sup>6</sup> Those who would be called by the name of their brothers-inheritors would have a place to live, small cattle and grazing rights in the *migras* (field for grazing), but apparently would not have their own vineyards and fields. Such brothers, together with their own families, would be known by the name of their brother (see also Deut 25:5-6; 2 Sam 19:33; 1 Chr 2:35; 7:1-4; 26:10-11, etcEzr 2:61-62; Neh 7:63-64; Isa 4:1) (Bendor 1996:173-175).

<sup>7</sup> See also Proverbs 13:22a: “A good man leaves an inheritance for his children’s children.” If the meaning is literal, then this is conditional upon the preservation of the *hl xñ* as a single whole, so that its head will be able to leave it as an inheritance to his children’s children (Bendor 1996:171, note 130). In a situation, where the *hl xñ* is held in a common trust between the brothers, the eldest son serves as the head (fratriarch) and the second ‘vice fratriarch’ (Bendor 1996:184-185 and authorities cited there). See also de Vaux (1961:19) who describes that in a fratriarchate, the eldest brother is the head of the family, and this authority is handed on, along with the property, from brother to brother ( see Bendor 1996:171-172 and note 131).

Bendor (1996:178-179) also contends that the firstborn had a special position in the *ba tyb* even before he succeeded his father. For example Reuben, the firstborn of Jacob, was concerned about the welfare of Joseph and the behaviour of his younger brothers (Gen 37:21-30); Eliab, the oldest brother, scolded David (1 Sam 17:28) and the latter was probably commanded by the former to return home for family sacrifice (1 Sam 20:29).<sup>8</sup> Had Jacob not cheated, Esau the firstborn would have become the lord of Jacob and his brothers (Gen 27:37) (see also 2 Sam 13:21 and Zech 12:10 for a father's emotional attachment towards his firstborn son). Bendor (1996:184) articulates that the “structure of the *ba tyb* reflected in the schematic ‘Generations of Adam’ (Gen 5:3-32) and ‘Generations of Shem’ (Gen 11:10-26), which emphasized the continuity from father to firstborn son, was not the writer’s invention..., it was constructed in keeping with an actual and ongoing reality, which was known to him.” Bendor (1996:188) then provides examples of how the prerogative of the firstborn son was demonstrated in three schematic cases in point of succession to the *ba tyb*.

*Case 1:* The firstborn and the second-born inherited; others “called by the name of their brothers”: When the father (head) of a *ba tyb* died, the *ba tyb* split into two: a “double portion” (two-thirds) part was headed by the firstborn and the remaining one-third portion was headed by the second born. Other brothers continued to live in and work in the inheritance, but they did not own any plot of land.

*Case 2:* When the father (head) of a *ba tyb* died, the *ba tyb* did not split up. Authority passed to the firstborn son (eldest brother). When the eldest brother died, authority passed to the second eldest brother who remained the eldest in his generation. When the second eldest brother died, authority passed to the eldest in the next generation, whether the firstborn of the second eldest brother or the firstborn of the eldest brother. Levirate marriage specifically addressed this situation.

*Case 3:* When the father (head) of a *ba tyb* died, the *ba tyb* did not split up. Authority passed to the firstborn. When the firstborn died, authority passed to his firstborn. Authority in the *ba tyb* always passed from firstborn to firstborn. In some cases, the *lvm* may hold partial and temporary authority until the firstborn successor could assume full authority.

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<sup>8</sup> Gerstenberger (2002:31), too, citing the same passage, acknowledges that, as in many cultures, in ancient Israel the older brother (and presumably also the older sister) was justified in instructing younger siblings.

In all the above three examples, whichever system a *ba tyb* wished to adopt, Bendor (1996:186) rightly concludes that the firstborn had a prescribed special position in inheritance and succession of the *ba tyb*. The variations of fratriarchy (case 2) and patriarchy (case 3) were not a matter of typology, but a matter of time and situations of inheritance within the *ba tyb*.

Prior to Bendor, Westbrook (1991) and Naomi Steinberg (1993a) had already argued in a similar line. Westbrook (1991:11-23; 118-141) asserts that the association between family [*ba tyb*] and the inalienable family land [*hl xll*] permeated the basic terminology (see also King and Stager 2001:48-49). The *ba tyb* survived as long as the *hl xll* remained intact. Therefore, to perpetuate the existence of the *ba tyb*, the estate was maintained undivided as a common property of co-heirs under the headship of the firstborn son. For Westbrook (1991:136), although the basic right of the firstborn son to receive a double share of inheritance was transferred from Reuben to Joseph, Joseph did not achieve seniority over his brothers. “It is Judah who is selected for the role of elder brother by Jacob in place of Reuben, for in addressing his sons on his death-bed, Jacob says to Judah (Gen 49:8), ‘the sons of your father shall bow down to you.’” In Westbrook’s (1991:136) view, this “refers to the right to administer the paternal estate while still undivided, which would normally have been assigned to the first-born as the obvious person to retain the authority of head of household.” This undivided inheritance gave rise to a singular institution: “Common ownership means that succession is by survivorship, not inheritance. If an undivided co-heir dies without a son of his own to step into his place, under the principle that ‘brotherhood is brotherhood and sonship is sonship’, his share of the inheritance would be deemed never to have accrued to him. By a legal fiction, the levirate duly provides him with the necessary offspring” (Westbrook 1991:140-141).

Westbrook (1991:140) also notes that by mutual consent, the co-heirs could also divide part of their common inheritance leaving the other part in common for common grazing or to be redistributed later. This seemed to be quite an acceptable practice. The estate was usually maintained undivided as a common property for a period of time after which it was eventually divided. It was the decision to divide the property rather than the father’s death which changed the structure of the family, breaking it up into a series of new, independent houses, each with its own head. When the head of the *ba tyb* died, the decision whether to divide the estate or to maintain it as a common property, lay with the legitimate heirs – in principle his sons – but on occasion including or consisting entirely of his daughters. When they divided their inheritance, it was carried out by lot, and everyone obtained an equal size (if not quality), except in the case of the firstborn, who was entitled to a double share. If the successor firstborn had committed a grave offence, then his father could grant

the firstborn rights and privileges to any of his preferred younger sons. Based on Numbers 27:8-11, Westbrook asserts that the order of succession which followed the same course as for redemption was: son, daughter, brother, uncle, nearest relative in the *hxpvm*. Steinberg (1993:5-14, 26-30), too, supported this priority order of succession.

After studying the kinship background of the wives in the Sarah-Hagar cycle (polycoity<sup>9</sup>), Rebekah cycle (monogamy), and Rachel-Leah cycle (sororal polygyny<sup>10</sup>), Steinberg (1993:5-14, 26-30) asserts that stories in Genesis 11:10-50:26 were concerned with genealogical continuity and inheritance. Ancestral narratives in Genesis were metaphors for establishing identity and defining community boundaries, that is, the kinship structures in the texts were metaphors for social structure (cf. McNutt 1999:201). The narratives made it clear that a woman within the patrilineage descent of Terah was an appropriate potential spouse for a man in the Israelite line of inheritance. This patrilineal endogamy initiated by Terah, constituted the Israelite descent line of Abraham. Biblical legislation on inheritance aimed to preserve the family land. The terms of the laws were based on patrilocal residence patterns. The preferred list of heirs to the father's land was: son, daughter, brother, father's brother. If none of the preceding was alive, the next surviving kinsman was recognised as heir (Num 27:8-11). In the interest of preserving the family land intact – that is, not dividing it into smaller and smaller tracts – Deut 21:17 maintains the rights of the primogeniture, according to which the firstborn was to inherit twice as much as his brothers. This law should be upheld even if the firstborn son was borne by a less favourite wife in the father's household.

Brin (1994:250, etc), affirming the prerogatives of the firstborn son in the division of inheritance by virtue of being the successor of the family office and titles, agrees with the above views that, in some cases the inheritances were kept undivided and in such a case, the firstborn son would be the head of the group:

The reality implied by the situation described in Deut. 25:5, 'If brothers dwell together...' is one of a family whose inheritance is not divided. Even though the status of the first-born is not mentioned in this context, it seems reasonable to assume that he was the head of the group.

In a further critique to some of the above works, Bendor (1996) does not employ theology, but social sciences, in her exhaustive study of the kinship institution of the *ba tyb*. As Benjamin (1998:517) rightly comments, Bendor "reads the Bible as a social scientist for whom the Hebrew

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<sup>9</sup> Polycoity is a form of marriage in which a man takes other women, who are of lower status than his primary wife, as his secondary wives. Sarah was Abraham's primary wife and Hagar was the secondary wife.

<sup>10</sup> Polygyny is a form of marriage in which a man may have more than one wife at a time, but the women are of equal status. Sororal polygyny is a form of polygyny in which a man marries sisters, women of equal status to each other.

text is ethnographic. She does not develop models from the fieldwork of anthropologists on extant traditional societies or from interpretation of artefacts recovered by archaeologists from the sites of traditional societies among whom the Hebrews lived.” However, Bendor makes a valuable contribution towards understanding the composition and functions of the *ba tyb* in general and the relationship between the *ba tyb*, the family land [*hl xn*], and primogeniture [*hrkb*] in particular.

It would be difficult to sustain Westbrook’s argument that whether to divide the property of their *ba tyb* or maintain it as a common property depended entirely on the decision of the heirs. Adherence of the Torah would include adherence of the law of primogeniture. Thus, it is more probable that the families of ancient Israel followed the existing inheritance rules. This position has been supported by many scholars including King & Stager (2001:47) who assert that the practice of primogeniture was common in ancient Israel. It should also be noted that the father’s last words were usually final (see Tsevat 1975). Westbrook’s assertion that Reuben’s firstborn status was transferred to Judah, not to Joseph, is interesting. He is quite right in stating that the *ba tyb* survived as long as the family property remained intact. Despite the difficulties to sustain some of his hypotheses, Westbrook provides valuable information, especially concerning the issue of how the undivided inheritance of the *ba tyb* was administered.

Based on Numbers 27:8-11, Steinberg and Westbrook rightly list daughter next to son in the succession order. Although this order would normally be applied for exceptional cases, the fact that daughters could inherit is significant. This exception to the rule of primogeniture and inheritance laws is a phenomenon this research will attempt to superimpose on the discussion on gender equality in the following chapters.

Steinberg (1993:5) rightly asserts that narratives in Genesis 11:10-50:26 are concerned with genealogical continuity of and inheritance within the Terah patrilineage in order to demonstrate that the Israelite nation was built on the Terah patrilineage. A theo-political ideological reading (see Chapter Four) of Abraham’s marriage to Sarah and Hagar, Isaac’s marriage to Rebekah, and Jacob’s marriage to Rachel and Leah, would indicate that the emphasis on the Terah patrilineage was a part of a programmatic political process of the Israelite nation building. In order to be included in Terah-Abraham patrilineage, one had to marry the right wife in a right way, namely a woman of Terah patrilineal descent through the blessing and arrangement of her parents. Ishmael had both a wrong mother and a wrong wife (wives). Esau had a right mother, but a wrong wife. That was why they could not be included in Terah-Abrahamic nation. Dan and Naphtali and Gad

and Asher, too, had wrong mothers (the mother of Dan and Naphtali was Rachel's maidservant Bilhah and the mother of Gad and Asher was Leah's maidservant Zilpah). But by making them sons of right mothers, Rachel and Leah, through surrogacy, they could then be included in the Terah-Abraham nation.

Steinberg does not discuss the situation in later Israel, for example, the situation of the Moabite woman Ruth. Not only was she regarded as the right wife, she was the right mother-ancestor of King David. However, Steinberg's omission of these later developments is methodologically understandable, as her research mainly covers narratives in Genesis.<sup>11</sup>

### 3.4 PRIMOGENITURE IN ROYAL SUCCESSION

As noted above, there seems to be a scholarly consensus that primogeniture was a generally practised custom for both family inheritance and royal succession. But recently, Greenspahn (1996)<sup>12</sup> strongly comes up against this theory. Greenspahn (1996:69-79) argues that the firstborn son did not enjoy an automatic right of inheritance and succession to the throne in ancient Israel.<sup>13</sup> Nor did succession to the offices of priesthood,<sup>14</sup> tribal leadership,<sup>15</sup> and judge<sup>16</sup> in ancient Israel occur automatically for the firstborn. When the successor happened to be the firstborn, it was not

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<sup>11</sup> Steinberg's discovery that mothers and wives decided which male line should be included in the Abrahamic nation of Israel is strikingly similar to the function of the mother or wife's clan in the Marâ society (see Excurses One and Two) which determines the social status of her husband and children.

<sup>12</sup> Noting that a continuing stream of discoveries from the ancient world during the past century has enhanced the understanding of the broader cultural context from which the Bible emerged, and attributing Dwight W Young as a scholar who understood the importance of these resources, Frederick E Greenspahn (1996) writes an article titled "Primogeniture in Ancient Israel" in honour of DW Young in *Go to the Land I will Show You* (edited by Joseph Coleson and Victor Matthews).

<sup>13</sup> More than a century ago Jacobs' (1894:46-62) had hypothesised that ultimogeniture was the rule in the earlier Israelite society; primogeniture became normative only after their settlement in Canaan. Thus the biblical stories about an older son's being displaced by his younger brother are to be understood as efforts to justify the earlier practice in light of later custom. However, because of a lack of evidence, Greenspahn (1996:69-71) finds it difficult to ascribe ultimogeniture to biblical Israel.

<sup>14</sup> Aaron may have been the oldest in his family (but see Exod 2:1-2), but there is no evidence that priestly positions were restricted to firstborns. Levi's first three listed offspring – Gershon, Kohath, and Merari – all fathered important priestly lines, as did Kohath's first, second, and fourth sons – Amram, Ishar, and Uzziel (Exod 6:6-15; Num 3:19) (Greenspahn 1996:76).

<sup>15</sup> There is no evidence that tribal leadership during the desert period was hereditary, much less that these positions were based on principles of seniority (Greenspahn 1996:76).

<sup>16</sup> Succession to the office of judge was not based on primogeniture. Samuel appointed both his sons to be judges (1 Sam 8:1), and Abimelech (Judg 9:2) let the people of Shechem decide whether to be ruled by Jerubbaal's seventy sons or by one man, implying that unless its citizens chose otherwise, all of Gideon's sons could have ruled over Shechem (Greenspahn 1996:76-77).

because of his birth order, but by his own merit. Like the Ancient Near East and other ancient societies, succession to the throne in ancient Israel was either through collective wisdom, rotary system, divination, the father's discretion, or the individual's own might and merit. Nor was the firstborn, lastborn or any paternal descent the "only automatic principle available for determining a successor." In some cases the "preferred line may as well be collateral or matrilineal, resulting in inheritance by brothers or brothers-in-law" (Greenspahn 1996:70). Biblical evidence is quite different from what is often supposed; there is no conclusive evidence that primogeniture was the norm for ancient Israel for inheritance and succession. There is a widespread consensus that primogeniture was characteristic of the Israelite society, a position that conforms the common view that firstborns were particularly well-suited for leadership positions. But according to Greenspahn, that was not the case in reality. Inheritance and succession in ancient Israel was not by primogeniture; neither did ancient Israel practice ultimogeniture; it was a landholding system that became known in medieval England as gavelkind.

For Greenspahn (1996:69-79), the Old Testament does not provide evidence of exclusive inheritance; rather, in common with its Ancient Near East counterparts, several passages in the Old Testament allude to the fraternal sharing of such inheritance (Gen 21:10; Deut 25:5; Judg 11:2; Job 42:15; Ps 133:1; cf. Gen 13:6 and 36:7; Pr 13:22; Ezk 46:18). The same basis applied to the division of the land as well (Num 34:13-29; Josh 14:2). Neither primogeniture nor ultimogeniture was universal both then and now. Based on a survey of some Ancient Near East groups and thirty nine unrelated modern cultures from around the world,<sup>17</sup> collective inheritance through sharing or division of an estate was the most widely attested pattern.<sup>18</sup> In many cases, daughters are included. Primogeniture was probably a product of the feudal system. For example, not until the eleventh century was primogeniture instituted in Britain in an attempt to maintain individually controlled plots of maximal size. With regard to the inheritance right of the firstborn recorded in Deuteronomy 21:15-17, for Greenspahn, this law is one of many in Deuteronomy, the central purpose of which was to protect the weak and vulnerable. Exclusive inheritance was not the issue. The law, "rather than repairing an abuse whereby fathers fictitiously designated certain children as firstborn in order to circumvent primogeniture, it protects unloved women by limiting their husband's power to deny their sons the status of the firstborn at the time they allocate their belongings..." (Greenspahn 1996:76).

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<sup>17</sup> Only thirteen out of thirty-nine groups surveyed granted the firstborn son (or oldest child) more control of family wealth than other members of the family (see Rosenblatt and Skoogberg 1974:53-54).

<sup>18</sup> See also McNutt (1999:85) who asserts that there was ordinarily no strict rule dictating that the oldest son had to inherit a larger share than others, so ideally all sons had equal rights of inheritance.

Noting that Deuteronomy 21:15-17 prohibits only one criterion, and this prohibition may be as late as the seventh century, Greenspahn (1996:79) concludes that the firstborn son did not have exclusive inheritance and succession rights in ancient Israel. Division of inheritance was at the father's discretion who normally divided it among his heirs, most often his sons. One son may have been given a preferential treatment. However, it is not clear how that son was chosen. With regard to succession, Greenspahn (1996:79) concludes:

[T]he dynastic principle presumes only that *a* son succeeds to the throne, leaving open the choice of which son that would be, as shown by various struggles for the throne and the involvement of third parties... Because the biblical stories of a younger son's displacement of his older brother cannot, therefore, be interpreted as attempts to justify deviations from some hypothetical norm, they must, instead, be reexamined on their own merits.

An analysis of Greenspahn's notions would indicate, first of all, that he was not quite correct in arguing that primogeniture was not the norm in inheritance and succession in the Ancient Near East. As we have extensively described in the preceding chapter, primogeniture was the customary practice for inheritance and succession in the Ancient Near East societies. However, if Greenspahn would wish to argue about exceptions to the rule, then he is right in averring that there were exceptional cases, whereby primogeniture was not followed in inheritance and succession to the throne in the Ancient Near East as well as ancient Israel. However, to argue that Deuteronomy 21:15-17 is not about the protection of the right of the firstborn, but rather about the protection of the weak and vulnerable unloved wife, seems to have missed the whole rhetorical persuasion that artfully progresses the text towards primogeniture.<sup>19</sup> The protection of the hated wife could not have been the central motif of Deuteronomy 21:15-17. The tone and progression of the text clearly leads towards the interest and protection of the right of the firstborn, whoever his mother may be (see Chapter Four).

Greenspahn (1996:77-79) is, however, quite right in pinpointing the following biblical evidences where primogeniture was not followed: Ishbosheth above his older brothers (2 Sam 2:8-9; cf. 1 Sam 14:19; 1 Chr 8:33; 9:39); Solomon above his older brothers (1 Chr 3:5; 2 Samuel seemed to have ignored the birth of intervening sons so that Solomon would appear to have been born immediately after the stillborn fruit of David and Bathsheba's affair) and Absalom and Adonijah's claim above their older brother Chilead (see 2 Sam 3:2-5; 5:13-16; 1 Chr 3:1-9; 14:3-7; in 1 Chr 3:1 he is called

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<sup>19</sup> This view of Greenspahn was also supported by McConville (2002) who suggests that the primary concern of the firstborn birthright law here at the polygamous family was to protect the interests of the mother of the firstborn.

Daniel); Abijah, son of Rehoboam's second and favourite wife above his older brothers (2 Chr 11:20); Jehoahaz above his older brother Jehoiakim (1 Chr 3:15; 2 Kgs 23:30-31, 36; cf. Jer 22:11); etc. According to Greenspahn, the four-century chain of Davidic rulers demonstrated only Judah's acceptance of that dynasty, not how the heir was to be chosen from within it. David chose his own successor. Others were designated by the military or foreign supporters (2 Sam 2:8-9; 1 Kgs 10:3-5; 23:34; 24:17; cf. Isa 7:6). Numerous kings are said to have been anointed by various functionaries, or even the people themselves through popular support. Many kings, or would-be kings, such as Absalom, Adonijah, Uzziah, Josiah, and Jehoahaz in the South and Sheba, Rehoboam, Jeroboam, Tibni, and Omri in the North, needed popular support before they could reign.

Having listed many exceptional cases, it should be, however, noted that, even in these exceptional cases, the prerogative of the firstborn son could be felt in the apologetic nature of the narratives whenever they report about the younger (youngest) son displacing the oldest (older) son. Why would the narrators be apologetic unless there was a circumvention of an existing rule?<sup>20</sup> Most importantly, a conspicuous lacuna missing in Greenspahn's essay was a theological-ethical meaning of primogeniture.

Brin (1994:264-273; see also King & Stager 2001:47-49) convincingly argues for the customary practice of primogeniture based on the evidence of the crowning of the firstborn prince (cf. Gen 25:5-6; 1 Sam 20:31; 2 Ki 3:27; 2 Chr 21:3; Prov 31:2; etc). The best proof of the normal practice of primogeniture in royal succession, according to Brin (1994:268), was the Chronicle text concerning Jehosaphat, 'but he gave the kingdom to Jehoram, because he was the first-born' (2 Chr 21:3, Brin's translation), while his brother was dismissed with 'great gifts, of silver, gold, and valuable possessions, together with fortified cities in Judah.' The motive clause, "for he was the firstborn", was also interpreted by the sages as clearly indicating that the firstborn had the right to reign (Brin 1994:268-269). Thus Greenspahn's argument that Jehoram's case did not necessarily prove primogeniture to have been binding, because his father could have preferred to be succeeded by the firstborn, is rather a weak speculation which does not rest on any textual support.

There are other examples that support the right of the firstborn prince to succeed his father-king. Bathsheba and her son, King Solomon, did not refute Adonijah's statement that, according to the rule of primogeniture, the throne originally belonged to him, the oldest living son of David (1 Ki

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<sup>20</sup> For Gerstenberger (2002:31), the reported divine hands in the younger brother's displacement of his older brother was a puzzle: "Possibly there are reasons unknown to us in earlier family structures why conversely in the Hebrew tradition surprisingly often the deity prefers the younger or youngest son (cf. Jacob, Joseph, David) to the older children."

2:15; 22). That is the same reason Solomon had to eliminate him lest he would claim the throne again (1 Ki 2:23-25). The Chronicler (2 Chr 21:16-22:1) records that Ahaziah, who is described as his father's youngest son, gained the throne only after his brothers had been taken captive. It is true that 2 Chronicle 21:3's parallel text of 2 Kings 8:16-29 did not refer to being the firstborn as the reason for Jehoram and Ahaziah's ascension to the throne. However, it could be that the Deuteronomistic theologian was more concerned about who ascended to the throne and how he ruled, while the Priestly theologian, a re-interpreter of 1 & 2 Kings in some senses, wished to provide a fuller history including that of primogeniture tradition.

### **3.5 APPARENT CONTRADICTIONS BETWEEN THE “LAW” (DEUTERONOMY) AND NARRATIVES ON PRIMOGENITURE**

There are apparent contradictions between what is promulgated in the “laws” (Deuteronomy) and “real life situations” depicted in narratives concerning primogeniture. The “law” of Deuteronomy (21:15-17) stipulates that a man must adhere to the birthright of his firstborn son when he divides his inheritance among his sons. A socio-rhetorical study of this text (see Chapter Four) would indicate that this right includes inheritance as well as succession. The law is to be observed even in a polygamous family. The father could not pass over his actual firstborn son and confer the right of the firstborn son to the son of his favourite wife. Even if the firstborn son is the son of the hated wife, his birthright as the firstborn should never be removed. In sum, according to Deuteronomy, the father does not have any right whatsoever to take away his firstborn son's birthright. However, in the narratives, we read about the Israelites, especially the patriarchs, committing frequent violations of this law. The firstborn or older sons were repeatedly displaced by the youngest or younger sons, in most cases through alleged divine intervention. Why would God contradict himself? This surely demands an exegetical explanation. The following are explanations adduced by some scholars:

#### **3.5.1 The law of Deuteronomy stops fathers' violations of the tradition of primogeniture in the narratives**

Christensen (2002:478) notes: “As Jacob himself attained his brother's birthright fraudulently, he passed on the birthright of his own firstborn son in an improper manner to the son of his favored wife. Here Deuteronomy declares that his action was contrary to God's law.” Tsevat (1975:125-127) argues for a firmly established office of primogeniture in civil and sacral laws of ancient Israel.

Deuteronomy 21:15-17 thus reaffirms that tradition. In the same vein, Crüsemann (1992:256-257) argues that, in ancient Israel, the family law was an area where non-state structures survived the longest, which meant it was to the advantage of generally unlimited patriarchal power – over their children, wives and patrimonies.<sup>21</sup> For Christensen, the beginning of written law, as presented in the Mishpatim, had as little effect here as did the Book of the Covenant as a whole. It was Deuteronomy that finally provided the breakthrough. As Israel created a centralised judicial system answerable to monarchy, Deuteronomy radically placed limitations on the erstwhile unchallenged traditional patriarchal rights (Deut 21:15-17; 22:22; 24:1-4). A father would no longer have the right to give preference to the son of his favourite wife over his actual firstborn.

For Blenkinsopp (2004:178-179), in agreement with Max Weber's (1952:61-70; 1978:1:370-384) theory, the primogeniture law of Deuteronomy 21:15-17 sprang out of the consolidation of a civil and religious bureaucracy, together with the concentration of power and wealth in urban centers, that inevitably worked against a kinship and tended to undermine its ethos. "The authority formerly wielded through the traditional mechanisms of the kinship network was restricted in other ways," thus "discretion in disposing of the estate was no longer left to the head of the household" (Blenkinsopp 2004:178-179).

Tigay (1996:195-196) asserts that even before the time of writing the Torah, the prerogative right of the firstborn son was already attested (see also Carmichael 2001 & 1985). He received a larger share of his father's estate than the other sons did.<sup>22</sup> This must have been the reason why violations in this regard (Gen 27:1-40) was "regarded as improper deviations from custom" (Merrill 1994:292). The Deuteronomic law sought to maintain and protect this right so that it might not be overridden by extraneous factors in given circumstances. Tigay also affirms that it was not always the biological firstborn who was designated the chief heir. In some cases it was the son of the first wife, no matter when he was born, while in others it was whatever son the father chose. Arnold (1997:658-659) argues that this right of the firstborn in ancient Israel included a double portion inheritance and in royal families this right included dynastic succession (2 Chr 21:3). However, based on the Jacob-Esau narrative (Gen 25:31-34), Arnold (1997:659) believes that a birthright was transferable from the firstborn to any other chosen son.

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<sup>21</sup> See also Matthews and Benjamin (1991a:17) who support this view: The father could "decide which of his sons would inherit and which would not... he generally handed on control of the members and material resources of the household to his own son. But the father could also designate an heir who was his own daughter (Num 36:2-12; Jos 17:3-6), or who was not his natural child (Gen 15:2)."

<sup>22</sup> See also Craigie (1976:282-283) who asserts that the situation imagined in Deuteronomy 21:15-17 was similar to that already known from earlier times in the life of Jacob (Gen 29:30). The law here was not intended to initiate certain rights for the firstborn, but it was designed to safeguard rights already belonging to them.

Tigay (1996:196) interestingly notes that the granting of a preferential share to one of the sons and the special status of the firstborn are separate issues and are not inherently connected. This is indicated by fathers who may potentially be tempted to grant a preferential share to some other son. In some places they regularly did so, and elsewhere preferential shares were sometimes awarded to adopted sons. The right of the biological firstborn was inherent in his being the ‘firstfruit of the [father’s] vigour’. This view was supported by Merrill (1994:293) who explains that the ‘firstfruit of the [father’s] vigour’ has a significant meaning. A man first gives indication of his virility and capacity to sire succeeding generations when his first son is born. It is altogether fitting and proper that that son who gave the father such recognition to be recognised himself for what he symbolised.

The above cited scholars rightly assert that prior to the formation of “laws” in the Covenant, Holiness, and Deuteronomic Codes, primogeniture was already an acknowledged and practised tradition in ancient Israel. However, it was very often not followed. Deuteronomic Code thus attempted to stop fathers’ repeated violations of this tradition both in monogamous and polygamous families. This argument suggests that primogeniture texts in narratives were earlier than those of Deuteronomy. However, this hypothesis is debatable. One could also present a good case for the Deuteronomic provenance to which we will return in Chapter Four. Arnold’s conclusion on the transferability of birthright based on Jacob-Esau narratives would appear to have overlooked what was promulgated in the Deuteronomic Code, which clearly prohibited the transfer of the firstborn birthright. Even from the vantage point of the narratives, it is still debatable whether one could really sell or transfer his birthright which had biologically embedded and significant meanings. Isaac was not aware of the Jacob-Esau birthright trade. Had Jacob not cheated, the alleged birthright trade between the two brothers would have had no effect.

### **3.5.2 Deuteronomic “laws” do not govern real life situations**

This hypothesis asserts that the legal instructions in Deuteronomy did not address actual problems in life, nor did these laws govern real life situations, because they were pieces of literature that addressed situations in Israel’s (narratives) literature. Carmichael (1974, 1979, 1985, and 2001, especially 1985) is the chief proponent of this thesis. Asserting that narratives in the Torah and Former Prophets were earlier than the laws in Deuteronomy, Carmichael asserts that the laws of Deuteronomy were shaped by traditions in narratives. The laws of Deuteronomy were “judgments upon events in literary history, not real history;” they did not address actual problems in life, nor did these laws govern real life situations. They represented pieces of literature that addressed situations

in Israel's (narratives) literature (Carmichael 1985:17). Within this rubric, Carmichael (1985:143) concludes that the law of the right of the firstborn son in Deuteronomy 21:15-17 was prompted by tradition about Jacob's problem with his firstborn son Reuben, the son of his hated wife Leah (see Gen 29:31, 32; 35:22; 49:3, 4).<sup>23</sup> Even the language itself, "the first-fruits of his strength," Carmichael reiterated, was taken from Genesis material (49:3) (Carmichael 1985:145).

Carmichael presumes that Reuben's defilement of his father Jacob's bed (Gen 35:22) was not the reason for his forfeiting his firstborn birthright. If it were so, Jacob would have considered Simeon or Levi, who were older than Joseph. Rather, the late born Joseph was given the right of primogeniture because he was the son of the beloved wife, Rachel. Simeon and Levi were the sons of the hated wife, Leah (1985:144-145; 2001:325). The real problem that the lawgiver in Deuteronomy observed, therefore, was not Reuben's offence, but it was Jacob's attitude towards his two wives: "(E)ven if Reuben had not offended, his father might still have awarded the right in question to Joseph, because Jacob favoured Joseph's mother, Rachel" (Carmichael 2001:325). The lawgiver's judgment, therefore, was that in such a situation whereby a man had two wives, one hated and the other loved, and should the firstborn son have been the offspring of the disliked wife, he would still be entitled to the right of the firstborn son. Carmichael (1985:143-144) then poses the question: "why in the entire law code (does) the lawgiver only present ... one explicit case of a problem within a family about inheritance rights, a case that is decidedly narrow in scope (where a man has two wives, one hated, the other loved, and the firstborn son is by the former)" unless it is a literary response to such a specific situation facing Leah and her son Reuben?

In the same vein with Carmichael, Crüsemann (1992), joining literary-critical and socio-historical methods with theological concerns against the backdrop of ANE Ancient Near East legal documents, studies the different legal collections and the growth of Torah (instruction) in the Old Testament, which comprised legal, moral, cultic, religious, theological and historical statements. Crüsemann (1992:13) cautions that the "relationship of law and reality, written law and societal reality, is quite complex and multi-faceted. We should not regard legal statements simply as descriptions of factual social orders ...; nor may we simply contrast written law as an ideal with reality..." For this reason, Crüsemann (1992:16) contends the need for examining "societal relationships in Israelite jurisprudence, the groups and institutions underlying the legal documents, their social intent and effects, the societal context of their theological bases and historical fictions."

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<sup>23</sup> Carmichael in his earlier work (1979:22-30) indicates that the Deuteronomist may well have looked at comparable elements in other traditions about the patriarchs' wives before drafting the law. Similarly he may have been guided by the rules relating to wives in Exodus 21:4, 8, 11.

In a critique of Carmichael, Levinson (1990:227-257) underlines serious methodological problems in Carmichael's approach to the laws of Deuteronomy. He suggests that it is necessary to question whether Carmichael's claims for the Deuteronomist's uses or allusions to narrative texts to compose the Deuteronomic literary corpus were tenable, as "it is unclear whether there is any text in Genesis through 2 Kings to which the laws of Deuteronomy do not refer or that does not refer to the laws" (Levinson 1990:251). In this researcher's opinion, any established kingdom needs a law code to govern its citizens. Like its Ancient Near East counterparts who had extensive laws governing every aspect of life, the laws in Deuteronomy were well promulgated to govern the real life and functions of the monarchical nation of Israel. Carmichael did not consider this hypothesis. Christensen (2002:477) argues for the provenance of Deuteronomy: "The laws of Deuteronomy were foundational, and the narrative tradition appears to be shaped by what is later called midrash."

Despite its methodological problems, Carmichael rightly stresses the theoretical and reflective aspects of the laws of Deuteronomy and "draws valuable attention to the literary character of the Deuteronomic laws, questions the presuppositions of conventional historical criticism, and raises the question of the relation between the biblical legal corpora and the narrative frame in which they are embedded" (Levinson 1990:253). We will return in Chapter Four to the laws of Deuteronomy's relation to narratives, Book of Covenant, Holiness Code, the influence of wisdom upon the composition of Deuteronomy, and the development of legal system in ancient Israel.

### **3.5.3 Displacement the firstborn in favour of a younger son as a literary work with a theological motif**

The following is the hypothesis of this thesis: The displacements of the firstborns in favour of younger sons in the narratives were carefully programmed literary works by the authors of narratives, having wider national and theological motifs, other than physical primogeniture. The principal proponent of this hypothesis is Syrén (1993). Interested in the recurrent motif of a firstborn being displaced by a younger brother in the patriarchal narratives of Genesis, Syrén (1993)<sup>24</sup> painstakingly studies the Ishmael texts (Gen 16:7-16; 17; 21; 25), Esau texts (Gen 25:19-34; 27; 32-33), genealogical texts of Ishmael and Esau (Gen 25 & 36), Reuben texts (Gen 30:14-16;

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<sup>24</sup> The original manuscript of Syrén's work, published by Sheffield Academic Press (1993), came about within the context of a larger project called "The Outsider in the Old Testament", headed by Professor Karl-Johan Illman of Abo Academy University. The project focused mainly on anonymous groups like children, orphans, widows, slaves and the poor. Syrén chose to study named individuals, the firstborn of the Patriarchs, albeit in the spirit of the project, hence the title *The Forsaken First-Born*.

35:22; 37:19-25, 29-30; 42:21-22, 37), and Manasseh texts (Gen 41:50-52; 48:5, 8-10). Syrén's main hypothesis is that the stories of forsaken firstborns and their younger brothers of the four great ancestors – Abraham's sons Ishmael and Isaac, Isaac's sons Esau and Jacob, Jacob's sons Reuben and Joseph, and Joseph's sons Manasseh and Ephraim – represented more than sibling rivalry or a father's idiosyncratic behaviour. They were thematically and carefully written and rewritten (interpreted and reinterpreted) stories concerning the status of the Israelites as a nation and how they should relate to the peoples with whom and in whose vicinity they lived. Narratives' displacement of the firstborn or elder brother by his younger brother found expression in Yahweh's bestowment on Israel as the firstborn nation above all other nations, even though Israel was the youngest nation of all.

Syrén's hypothesis provides a sound explanation concerning the apparent contradictions between Deuteronomy and the narratives on primogeniture. This hypothesis is an area upon which this research aims to proceed further. We will return to this notion in Chapter Four under the heading of "theo-political ideological texture of primogeniture".

### **3.5.4 Contradictions validate primogeniture**

Although fathers often exercised their authorities and thus violated and changed the customary practice of the prerogatives of the firstborn in family inheritance and royal succession, Brin (1994:257-263, 273-281) holds that the fact that a higher authority's legitimation was usually sought in such a case was a strong indication of primogeniture as a generally accepted and practised tradition. Let alone invalidating it, the circumstances surrounding the contradiction rather validated primogeniture. For example, vassal kings sought Hittite Suzerain's approval when they wanted to crown the younger son instead of the firstborn son. The gods' legitimation was usually sought when a younger prince other than the firstborn prince was crowned in Mesopotamia. In the same way, biblical writers allegedly reported Isaac's displacement of Ishmael, Jacob's displacement of Esau, and Solomon's displacement of Adonijah as the plan and intervention of Yahweh.

For Tsevat (1975:127), the narratives' repeated displacements of the firstborns were not indications of an original ultimogeniture in Israel. It rather represented the indication of a firmly established office of primogeniture in civil and sacral laws of ancient Israel. Only against this backdrop of established law of primogeniture, could the motives of narratives' displacement of the firstborns be understood:

In their present form, these narratives are written for an audience which considers the laws of the firstborn to have full weight, and which, therefore, is fully aware of the tension between sacred history and present responsibility... This makes it possible for the narrative to bestow on Israel, which was still in the process of being constituted and which was the youngest of the nations, the title of firstborn (Exod 4:22; echoed in Jer 31:8f.; cf. 2:3).

In the same vein with the above works, in this researcher's opinion, narratives of younger (youngest) brothers displacing older (oldest) brothers were thus a carefully presented theo-political ideology the Israelite nation-building. The narratives bestow God's legitimation and blessing on Israel, the youngest nation, above all other nations. This, let alone nullifying the tradition of primogeniture, clearly affirmed the existence and practice of the tradition during the time of writing these narratives.

### **3.5.5 Deuteronomy 21:15-17 is not a primogeniture text *per se***

For Rogerson (2003:165), Deuteronomy 21:15-17 is not about the firstborn or primogeniture. It is rather a continuation of the theme of compassion to women in the preceding text (21:10-14). Rogerson (2003:165) further asserts that the text presupposes a polygamous family "in which it is likely that a second, and younger, wife has been taken by a man after his first wife became less attractive. The regulation preserves the rights of the son of the elder wife (who is most likely to have borne the first son) to his inheritance, and thus to her support if she survives her husband." One could sympathise with Rogerson's construct of Deuteronomy 21:15-17 as the Old Testament's compassion, defence, and protection of women. However, the genre of Deuteronomy 21:15-17 is not in the form of the peculiar Deuteronomic style of a second person singular address, but it follows a common law formula of addressing the impersonal third person masculine in the Ancient Near East law collections. The text dramatically progresses towards a climatic conclusion on the affirmation and preservation of the right of the firstborn.

## **3.6 CONCLUDING REMARKS**

Despite their interesting findings, scholars reviewed above<sup>25</sup> have not adequately studied some of the important subjects relating to primogeniture in the Old Testament, namely primogeniture in ancient Israel's contemporary other Ancient Near East societies, which this research undertook

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<sup>25</sup> As indicated earlier, only selective works and themes on primogeniture were reviewed in this chapter. These works and other works will be further cited and analysed in Chapters Four and Five.

quite extensively in the preceding chapter (Chapter Two); the firstborn as the family office; a tripartite link between primogeniture, patriarchal family, and the family land; primogeniture system as familial responsibility; narratives' displacement of the firstborns in favour of younger ones as a theo-political ideological construct of the Israelite nation-building; and the sanctity and significance of the firstborn. Thus further studies on these themes will be this researcher's contribution towards Old Testament studies on primogeniture.

Modernity and post-modernity's attempts to reconstruct and deconstruct, the feminists' rejection and selection, and conservatives' attempt to demean and redeem notwithstanding, this ancient text of the Hebrew Bible (Old Testament) remains reliable and authoritative Scripture (cf. Waltke 2001:47). This researcher would urge a return to the text, engage with it, and let the text speak meaningfully to our own contexts as well. It is to this subject, studying primogeniture in the Old Testament through a socio-rhetorical interpretation of Deuteronomy 21:15-17, that we now turn.

## Chapter Four

### PRIMOGENITURE IN THE OLD TESTAMENT

#### A Socio-Rhetorical Interpretation of Deuteronomy 21:15-17

#### 4.1 INTRODUCTORY REMARKS

In the preceding chapter we thematically reviewed recent scholarly opinions on primogeniture in the Old Testament. Our task in the present chapter is to take a closer look at primogeniture texts in the Old Testament from a socio-rhetorical perspective and engage in further research on themes and nuances relating to primogeniture which have not been adequately addressed by recent Old Testament scholarship. Thus some overlap between Chapters Three and Four is unavoidable. In the present chapter we shall attempt to understand Robbins' (1996b) definitions of different textures and sub-textures, offer a critical review wherever applicable, and apply them to the text. In so doing, we shall attempt to ask all the questions and sub-questions Robbins (1996b) asks in his socio-rhetorical (multidimensional) method for our analysis of Deuteronomy 21:15-17. Some questions (especially some sub-textures) may appear rather trivial from church normative perspective. We shall nevertheless attempt to ask all the questions. If questions are not asked, meanings and messages hidden in a text will never appear.

In so doing, before we engage in a detail analyses of the five-textures (inner, inter, social and cultural, ideological, and sacred textures) of Deuteronomy 21:15-17, it is important to briefly analyse rhetoric in the book of Deuteronomy and the rationale for choosing our primary text, Deuteronomy 21:15-17, as the primary text for understanding primogeniture in the Old Testament. We shall also consider the Pentateuchal criticism, with reference to the authorship and date of the Pentateuch in general and Deuteronomy in particular, as these phenomena will inevitably influence our analyses of the different textures of the text.

##### 4.1.1 Rhetoric in Deuteronomy and in 21:15-17

The book of Deuteronomy is a rhetorical piece of literature *par excellence*. To this Tigay (1996:xviii-xix) rightly affirms:

As befits Moses' purpose, Deuteronomy has adopted a rhetorical style well suited to oral presentation. Its sentences are long and flowing. They are marked by assonance, key words, and stereotyped<sup>1</sup> expressions, all valued features of oral presentation. Themes are repeated frequently, a practice that enables listeners in a large audience to catch everything that is said. Even the laws are lucid and free of technical details, intelligible to all ranks of the people. And instead of adopting the impersonal style typical of law codes, Deuteronomy, more than any other book in the Torah, addresses the laws directly to people (see also Weinfeld 1972:171-178).

On his part, Weinfeld (1972:171-178) asserts that the use of the rhetorical technique is a clear mark for the employment of rhetorical techniques in the book of Deuteronomy:

The Deuteronomic orator often employs rhetorical phrases such as: 'your eyes see' *twarh ~kmyl*, 'you have seen' *~tyar ~ta* (11:7; 29:1 et al.) to implant in his listeners the feeling that they themselves have experienced the awe-inspiring events of the Exodus; and he repeats these phrases again and again as if to hypnotize his audience. The device of the rhetorical question is also used significantly and with purpose: 'Did a people ever hear the voice of a god...?' (4:33).

Deuteronomy 21:15-17 is chosen as our primary text for understanding primogeniture in the Old Testament because it is the most explicit Old Testament text that affirms primogeniture. The text assumes its original readers understood the tradition/practice of primogeniture. However, for modern readers, this short but rich text does not provide adequate information surrounding the tradition and nuances of primogeniture so as to make a conclusive statement on primogeniture in the Old Testament. We thus need to look at extra-biblical texts, especially the Ancient Near East texts, and other biblical texts for a better understanding of primogeniture in the Old Testament; hence socio-rhetorical interpretation! We have extensively studied primogeniture in the Ancient Near East in Chapter Two. The present chapter shall analyse Deuteronomy 21:15-17 and other Old Testament texts that deal with the subject of primogeniture.

Does Deuteronomy 21:15-17 qualify to be studied as a rhetorical unit? This text is part of a larger rubric of Deuteronomy 21:10-21 which deals with three matters of marriage and family<sup>2</sup> – marriage with captive/slave woman (21:10-14), marriage with two wives and the rights of the firstborn in

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<sup>1</sup> Deuteronomy's stereotyped expressions that are closely tied to its main themes include "love the Lord your God with all your heart and with all your soul"; "the commandment that I enjoin upon you this day"; "the Lord freed us from Egypt by a mighty hand and outstretched arm"; "a land flowing with milk and honey"; "the site which the Lord your God will choose to establish His name"; "do what is right (or evil) in the sight of the Lord"; "bless you in all your undertakings"; "sweep out evil from your midst"; "other gods (whom you have not experienced)"; and "abhorrent to the Lord" (Tigay 1996:xix, his translations; see also Driver 1895:lxxviii-lxxxiv; Weinfeld 1972:320-359).

<sup>2</sup> Other family "laws" in the Deuteronomic and Covenant Codes include: claims of chastity against a bride (Deut 22:13-21); adultery with a married woman (Deut 22:22), adultery with a betrothed girl (Deut 22:23-27), rape of an unbetrothed girl (Deut 22:28-29), seduction of an unbetrothed virgin (Exod 22:15-16), restrictions on remarrying one's divorcee (Deut 24:1-4), levirate marriage and the ceremonial release from such a marriage (Deut 25:5-10), improper interference by a woman into a brawl (Deut 25:11-12), and injury of a pregnant woman in the course of a brawl (Exod 21:22-25) (see Rofé 2002:169-192 for discussion on these "laws").

such a polygamous family (21:15-17), and authority of parents (21:18-21). However, based on the *šetûmā* [S] boundary layout markers after vv 14 and 17, vv 15-17 form a distinguished independent rhetorical unit (cf. Christensen 2002:477).

#### **4.1.2 A brief review of Pentateuchal criticism with reference to its authorship and date**

There have been endless scholarly quests and debates over a long period of time concerning the date, location, and authorship/composition of the Pentateuch. The last two centuries witnessed numerous commentaries, monographs, and articles on the subject. Since the turn of the nineteenth century, traditional assumption of the Mosaic authorship of the Pentateuch is no more universally accepted. Based on the lack of both internal and external evidence, most critical scholars agree that assigning the Mosaic authorship for all the materials of the Pentateuch as we have it today is historically implausible. The historicity of Moses itself is seriously challenged.<sup>3</sup> Even for those who advocate the traditional position of the historicity of Moses, Moses recording his own death and burial are still regarded as historically implausible.<sup>4</sup>

While there are convincing arguments for the historical implausibility of the Mosaic authorship of the whole of Pentateuch, at the same time this opens up various speculations concerning the date and authorship of various parts of the Pentateuch (Collins 2004:59). For those who affirm the traditional position of the Mosaic authorship of the Pentateuch or at least part of the Pentateuch, the alleged historical implausibility of some of the materials is explained in terms of later interpolation, edition, and redaction. But for others (cf. Whybray 1995:12-28 and literature cited there), the historical implausibility of some of the materials to have been written by Moses is not the central arguments for rejecting Mosaic authorship of the Pentateuch. Their arguments are based more on literary and theological emphasis of different texts of the Pentateuch (cf. Bosman 1997e:1-6 and literature cited there for interesting discussion on either Moses as a historical figure or a model of Israelite and Jewish identity).<sup>5</sup>

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<sup>3</sup> There is no convincing reference to Moses in the Egyptian sources.

<sup>4</sup> But there are still some, (for example, this researcher's undergraduate seminary students in Ghana), who strongly believe that God might have told Moses about the latter's own death; so it is possible that Moses wrote about his own death.

<sup>5</sup> Knierim (1995:378), arguing that the whole Pentateuch (including Genesis) is the biography of Moses as the identity of Israel, asserted that "in the work of Moses for Israel, especially in Moses' mediation of the revelation at Sinai as well as in his testament, the program is laid down by which Israel is called to be the paradigm for humanity in God's/Yahweh's creation. The decisive person for mediating this revelatory paradigm is Moses. Thus, just as Moses is

For many scholars, the Pentateuch as we have it today reached its final stage through a long process of writing, rewriting, and redaction by the Priestly and Deuteronomistic (prophetic) authors. It is widely believed in the scholarly circles that the Pentateuch reached its final form by the time of the late monarchic or exilic period (cf. Van Seters 1975:38). Whybray (1995:26) supports Van Seters's thesis, but suggests that the Pentateuch is the work of a single author, whoever that author may be. Brueggemann (2003:21) assigns the final form of the Pentateuch to the exilic period or early post-exilic period (cf. Neh 8:1). On his part, Collins (2004:13) asserts that the Hebrew Bible received its final shape in the post-exilic, or the Second Temple period.

An argument advanced recently in support of the historicity of Moses is the use of the title "Man of God" for him. Constructing a pre-exilic memory of Moses based on the title, "Man of God" [~yhl a(h) vja] (Deut 33:1; Jos 14:6; 2 Chr 23:14; 30:16; Ezra 3:2; Ps 90:1), which is used for historical persons like Elijah and Elisha, Dijkstra (2006:17-36) argues that Moses was probably a historical person (cf. Spronk 2006:253-264 on "the picture of Moses in the history of interpretation").<sup>6</sup> However, even if Moses was a historical person, his historicity is not necessarily a proof of his authorship of the Pentateuch. In recent years, there seemed to be some kind of compromise between those who established and rejected the Mosaic authorship of the Pentateuch. They suggest that "authority" and "authorship" are two different things, although they are closely related. For Tigay (1996:xxvi), the Pentateuch is still Mosaic (Mosaic authority) even if it may not have been written by Moses. For Brueggemann (2003:18), the claim of Mosaic authority for the Pentateuch "did not entail the notion of 'authorship' in any modern sense, for the tradition is interested in authority and not in authorship... It is to be recognised at the outset that such a traditional way of speaking of the 'Torah of Moses' was a device whereby Israel credited its normative teaching to its most normative teacher."<sup>7</sup> For Carmichael (1982:519), the Mosaic

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seen as the single most decisive person for Israel's history and existence, so is he the decisive person for all humanity's history and existence."

<sup>6</sup> As one of the features of a multidimensional approach to the Scriptures is to "even" take faith communities reception interpretation into consideration (cf. Patte 1995), for members of some faith communities like this researcher who believes in the supernatural elements such as resurrection and the authority of both the Old and New Testaments, the strongest proof for the historicity of Moses is his appearance at the transfiguration (Matt 17:3) after more than one thousand years of his death. It is true, however, that because of lack of extra biblical evidence, it is scientifically difficult to prove the historicity of Moses. In spite of this, it suffices to say that one must not easily brush aside more than three thousand years of faith communities' belief and experience – for the Israelites, Jews, Christians, and Muslims, Moses was a historical figure.

<sup>7</sup> The pursuit of "authority" seems to be the norm even for modern day writers. For example, a rural village pastor might have been preaching about and defending the canon of Scriptures but no writer would cite him as his or her authority on canon. But when well established scholars like Brevered Childs writes about it, he suddenly becomes an authority.

authorship of Deuteronomy, or the Pentateuch for that matter, is a creation of the Deuteronomist. But Carmichael explains that, by creating a Mosaic authorship of Deuteronomy, “the Deuteronomist is not engaging in the kind of forgery common to the history of law... The important point is that he sincerely believes he is producing judgments that Moses himself must have made.”

Even if “authorship” and “authority” are two different things, the question concerning the role of Moses in the formation of the Pentateuch remains a subject of debate – was he a historical figure who wrote or spoke the bulk of Pentateuch or a created model of an Israelite identity? The jury is still out. The debate continues. The field remains wide open for further research. Scholars are yet to establish a consensus on the authorship, date, and history of the composition of the Pentateuch. Having said that, it should be noted that for those who read the Bible seriously as a normative and authoritative book, their real interest does not lie in these questions. If so, as Whybray (1995:12) rightly notes, they would experience only frustration. Therefore, until someone comes up with a convincing proof to dissociate Pentateuch from the Mosaic tradition, it is scholarly warranted and relevant to continue to speak of the Pentateuch as Mosaic. In so doing, in the Priestly materials of Exodus-Numbers, Moses is portrayed as Yahweh’s unique mediator communicating *all of God’s Torah* (commandments, statutes, and ordinances) to the people while the Deuteronomistic tradition recognises the humanity of Moses (Beegle 1992:916).

With regard to the book of Deuteronomy, there is equally no scholarly consensus concerning the date and authorship of the book of Deuteronomy. Some associate Deuteronomy with the eighth century prophetic movement (e.g., Wellhausen 1885 [JEDP theory] and his followers). This school includes those who specifically associate it with the Northern prophet Hosea (cf. Tigay 1996:xxiii). Others associate Deuteronomy with the seventh century Josiah’s reform (De Wette 1805 and his followers, cited in Tigay 1996:xx; Christensen 1991:lxviii). There are yet others who postulate Deuteronomy as a prologue to the middle sixth century Deuteronomistic History of Joshua to 2 Kings (Noth 1943 and his followers). Taking all these positions into consideration, Rofé (2002:1-13) argues that the roots of Deuteronomy lie in monarchical Israel and Judah, but the literary climax belongs to the seventh century BCE, and the final stages of the text are exilic and early post-exilic.<sup>8</sup>

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<sup>8</sup> For the traditional position of the Mosaic authorship of the Pentateuch, Deuteronomy may be dated during the later part of Moses’ life (ca. 1400 BCE; Barker [ed] 1985 places Exodus at 1446 BCE and the death of Moses at 1406 BCE), based on the rhetoric of the book showing Moses’ farewell speech or last words. This position is based on the claim of Deuteronomy itself that suggests that materials in the book are either written or spoken by Moses himself (1:1, 5; 31:9, 22, 24, 30). Other Old Testament books, especially the Deuteronomistic historical books, also assert the historicity of Moses and thus the Mosaic authority of Deuteronomy (cf. 1 Ki 2:3; 8:53; 2 Ki 14:6; 18:6, 12) and so do Jesus and other writers of the New Testament (cf. Matt 19:7-8; Mk 10:3-5; 12:19; Jn 5:46-47; Acts 3:22; 7:37-38; Rom 10:19) See Kalland 1992:3-10.

More recently, Le Roux's (2005:16-17) interesting reconstructs that the book of Deuteronomy was a result of two major Deuteronomistic redactions (DtrD and DtrL) during the exilic and post exilic times. The first Deuteronomistic redactor, the exilic DtrD, transformed the late pre-exilic reform program (Deut 6:4ff; 12:13-28:44) into a Moses discourse (Deut 5; 9-10). The DtrD then added the Decalogue to the Deuteronomic legislation (in Deut 12-26) and situated the events at Horeb. The story of the golden calf, Moses' intercession and the re-issuing of the Decalogue (Deut 9:9-21; 10:1-5) also were inserted into this redactional corpus. The theological motive of the redaction, according to Le Roux (2005:17) was to give some hope to the exiles after the destruction of Jerusalem. The DtrD grappled with the problem whether there will ever be an 'Israel' again. The story of the golden calf provided an answer. Although Israel violated the covenant stipulations, Yahweh kept his part of the covenant and would therefore grant them a second chance.

Le Roux (2005:17) further articulates that the second Deuteronomistic redactor, who is the post-exilic DtrL, also had to address an important theological question facing the post-exilic community – how could Israel prevent another 587 BCE? DtrD could not provide an answer. But DtrL ventured to respond to this pressing issues by framing DtrD with sections from Deuteronomy 1-3 and 29-30 and linking them to the book of Joshua. In this way, the Promised Land not only increased in significance but the redaction theology also highlighted the possibility of losing it again. For DtrL, this could be avoided only by living the stipulations in Deuteronomy 12-26 to the full (see also Otto 2000; 2005:24-49).

In the final analysis, the above propositions do not have to contradict each other. Moses could have written or spoken some of the words. But the bulk of writing, rewriting, and redaction of the book of Deuteronomy could also have been done during all these periods, that is, during the early prophetic movement (ninth-eighth century BCE). Some of them could also have been written during Josiah's reform which includes the centralisation of worship/sacrifice (cf. Deut 12). Other materials could have been written in the seventh century BCE during the late monarchic/early exilic Deuteronomistic historiographical periods (DtrD) or the late sixth century BCE and post-exilic Second Temple period (DtrL). A strong case for dating Deuteronomy not much earlier than the times of Josiah's reform is its structural resemblance to the royal treaties practised during the Late Bronze Syro-Hittite and Assyria (cf. Collins 2004:162, 169-170; Weinfeld 1972:59-157; 1993:223-264).

Concerning the date and authorship of the primogeniture text of Deuteronomy 21:15-17, based on the mention of  $\sim\text{yiv y\ddot{p}}$  (two-third or double portion) share of inheritance for the firstborn, the

earliest attestation of which is found in the laws of the second millennium Middle Assyrian law collections (see Chapter Two), it is probably an ancient text incorporated into Deuteronomy during its final compilation, possibly during the time of the exilic redaction (Le Roux 2005:16). According to Watts (1970:259), the text is a legal document “taken over in totality with no sign of reworking in Deuteronomic style.” In sum, regardless of who wrote the Pentateuch, whether Moses, priests, prophets, or sages, we could possibly conclude that the Pentateuch (including Deuteronomy), as we have it today, reached its final stage during the exilic and post-exilic periods (cf. Van Seters 1975; Le Roux’s 2005).

### 4.1.3 Torah: law or instruction?

There have been some lively scholarly discussions concerning the rendering of the Hebrew word *hrwt*. Traditional translation of it is “law.” However, based on its verbal meaning as well as internal and external evidence from both narrative and legal materials of the Pentateuch as *hrwt*, it has become accepted among scholars that translating *hrwt* as “law” would be too narrow a term to describe what *hrwt* is and means. In addition, because its contents are not laws in a strict sense of the word, most scholars would agree that “teaching” or “instruction” would be a more inclusive and meaningful rendering of the Hebrew word *hrwt* (cf. Brueggemann 2003:16-17).<sup>9</sup> Thus this research

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<sup>9</sup> In the New Testament, the Pentateuch is called *ton nomon* (“the law”) (e.g., Mt 5:17-18), “*ton nomon* (the law) of Moses” (e.g., Lk 2:22), or simply “Moses” (e.g., Lk 16:31; Acts 15:21). *ton nomon* (“the law”) is also used in a general term to refer to the Old Testament as a whole (Jn 10:30 cf. Ps 82:6; 1 Cor 14:21 cf. Is 28:11-12). Both Jewish and Christian literature normally describes the Pentateuch, including both “legal” materials and narratives, as Torah. The Old Testament itself has a number of comparable expressions concerning the Pentateuch. It is referred to as the “book of the Torah of Moses” (Jos 8:31; 23:6; 2 Ki 14:6), the “book of the Torah of God” (Jos 24:26) or the “Torah of the Lord” (2 Ki 10:31 [see also Ps 1:2]), the “Torah of Moses” (Jos 8:32; 1 Ki 2:3; 2 Ki 23:25), or simply “the Torah” (Deut 1:5; 4:8, 44; 17:18, 19; 27:3, 8, 26; 28:58; 29:29 [28]; 31:11-12; 32:46; Jos 1:7; 22:5; 2 Ki 17:13; 23:24) or “book of the Torah” (Deut 28:61; 29:21 [20]; 30:10; 31:26; Jos 1:8; 8:34; 2 Ki 22:8). The term Torah occurs 56 times within the Pentateuch and is used in five different ways: an individual pronouncement (e.g., Num 19:14; 31:21; Exod 12:49), a group of Torahs on a single subject (e.g., Lev 6:9; Num 6:13), a particular collection of Torahs (e.g., Exod 24:12; Deut 31:9), general description for God’s Torah (e.g., Gen 26:5; Exod 18:16; Deut 4:8), and a combination of narrative and “law” (e.g., Deut 1:5) (cf. Selman 2003:489). It is commonly accepted that the verbal root of the Hebrew nominal *hrwt* is *hrwh*, the Hiphil form of the verb *hry*, meaning to teach or instruct. Some scholars, for example, Östborn (1945); Selman (2003:498) find the original idea of teaching in *hrwt* and *hrwh* in the practice of extending a hand or finger to point in a particular direction. However, this alternative is suggested only on the basis that other alternatives are less convincing. An etymological quest for the word *hrwt* indicates that “it is impossible to be sure which direction any borrowing between *hrwt* and *hrwh* took place or whether *hrwt* is linked with this verb or with either of two other Hebrew verbs with the same spelling, it is extremely doubtful whether *hrwt* can be defined on any etymological basis” (Selman 2003:498). The word *hrwt* occurs 220 times in 214 verses in the Old Testament. A survey of these occurrences, according to Selman (2003:498), reveals three main aspects to the word Torah: teaching or instruction to be learned, commands to be obeyed, and guidance about how to live in specific situations. In the same vein, Miller (2000:497-507) describes the way of Torah as the worship of God as well as the care of the needy and the weak. For Miller, Torah in the Old Testament is not just a set of civil and criminal laws; the way of Torah is the way that leads to life... To keep such instruction is to be like a strong, durable, well-watered and fruitful tree (Ps 1)” (Miller 2000:507). For McConville (1984), the laws in Deuteronomy function not as laws *per se*, nor do they mark historical developments based on their provenance and relation to laws in other texts, but primarily as theology. In his study of Deuteronomic

shall refer to legal materials in the Pentateuch as “legal instructions” and narrative materials as “narrative instructions”, respectively, unless the context clearly demands the use of the term “law.”

#### 4.1.4 Three codes of the Pentateuch

Three sections of the Pentateuch are commonly referred to as “codes”<sup>10</sup> – the “Covenant Code” or the Book of Covenant (Exod 20:22-23:33), “Holiness Code” (Leviticus 17-26), and “Deuteronomic Code.” Exodus 20:19-23:33 is so called the “Covenant Code” because it contains the provisions by which a minor party/vassal (the Israelites) is bound to a treaty or covenant given by the major party/suzerain (Yahweh) (Deist 1984:59). The foundation of the code is the Sinaitic Covenant (Exod 19:1-20:21) and is a continuation of the said covenant’s stipulations. The term “Holiness Code” is first used by August Klosterman (1877). The most convenient reference is the same author’s *Der Pentateuch* Vol 1 (1893:368, 418; cf. Levine 1989:110; Boecker 1976:186). These texts are called the “Holiness Code” because the theme of holiness is rare outside in Leviticus, being virtually restricted to 11:44-45, within which the theme occurs frequently (cf. 20:7-8; 21:8, 15, 23; 22:9, 16, 32). Twenty-five chapters of Deuteronomy (chapters 12-26) are collectively called the “Deuteronomic Code” (legal code) because of its legal overtures within the book of Deuteronomy. In fact this is the only section of Deuteronomy that qualifies to be called Deuteronomy (“second law”) in a strict sense of the term, as chapters 1-11 and 27-34 are largely narratives (cf. Bosman 1991:197-202 for discussion on these three codes).

There are numerous discussions concerning the chronological relationship between these three “law codes.” Traditionally, it is assumed that the Covenant Code is the oldest followed by the Holiness Code and Deuteronomy but this assumption is not universally accepted anymore. Therefore, the chronological relationship between the Pentateuchal “law codes” is one of the main themes to be discussed under the intertexture below. Our primary text falls under the “Deuteronomic Code.” Thus, before we engage in a five-texture analysis of Deuteronomy 21:15-17, it is important to first look into a broad outline of the book of Deuteronomy and the Deuteronomic legal instructions (Deut 12-26).

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theology, McConville (1993) concludes that although God punished Israel over and again for failure to keep his covenant stipulations (“laws”), they survived as a nation only because “there is indeed grace in history in the end”, not by observing the laws (McConville 1993:162).

<sup>10</sup> The term “code” is primarily used here not in terms of categories of laws (law codes), but it is used to refer to “a set of moral principles or rules of behaviour that are generally accepted by society or a social group” (Oxford Advanced Learner’s Dictionary 2000) as well as in terms of genre. However, depending on the context and usage, it is also used to describe a code of law.

### 4.1.5 Outlines of the Book of Deuteronomy and the Deuteronomic Code

In rhetorical form, Deuteronomy consists of “farewell discourses and poems that Moses delivered to Israel in the last weeks of his life, and brief narratives about his final activities: commissioning Joshua as his successor, writing down the discourses, and Moses’ death” (Tigay 1996:xii). We do not need to produce an exhaustive outline of Deuteronomy here, as it can be read in many commentaries and monographs. Broadly, Deuteronomy may be outlined as follow: prologue (1-4), essence of law (5-11), core laws (12-26), curse and blessings (27-28), covenant renewal (29-32), and epilogue (33-34) (cf. Bandstra 1999:198).<sup>11</sup>

Christensen (2002:477) provides a helpful chiasmic outline for the Deuteronomic Code (Deut 12-26):

A	Public worship at the central sanctuary and in local towns	12:1-14:21
B	Laws on human affairs in relation to God – sacred	14:22-16:17
X	Laws on leadership and authority – executive and judicial	16:18-21:9
B’	Laws on human affairs in relation to others – secular <sup>12</sup>	21:10-25:19
A’	Public worship at the central sanctuary and in local towns	26:1-19

<sup>11</sup> The following outline (Tigay’s 1996:xii) illustrates long discourses and poems (in italics) in Deuteronomy:

- I. HEADING (1:1-5)
- II. *PROLOGUE: FIRST DISCOURSE* (1:6-4:43)
  - A. *Retrospective: The Journey from Horeb to Moab* (1:6-3:20)
  - B. *Exhortation to observe God’s laws* (4:1-40)
  - C. Appendix: Selection of asylum cities (4:41-43)
- III. *SECOND DISCOURSE: THE COVENANT MADE IN MOAB* (4:44-chap. 28)
  - A. Heading (4:44-49)
  - B. *Prologue; The theophany and covenant at Horeb* (5)
  - C. *Preamble to the laws given in Moab* (6:1-22:30)
  - D. *The laws given in Moab* (11:31-26:15)
  - E. Conclusion to the laws (26:16-28:68)
    - 1. *Mutual commitments between God and Israel* (26:16-19)
    - 2. Digression: Ceremonies to reaffirm the covenant upon entering the Promised Land (27)
    - 3. *Promises and warnings consequent upon fulfilling or violating the covenant* (28:1-68)
  - F. Subscription (28:69)
- IV. *THIRD DISCOURSE: EXHORTATION TO OBSERVE THE COVENANT MADE IN MOAB* (29-30)
- V. *EPILOGUE: MOSES’ LAST DAYS* (31-34)
  - A. Moses’ preparation of Israel for the future (31-32)
    - 1. Preparatory acts (31)
    - 2. *Moses’ poem* (32:1-43)
    - 3. God’s final instruction to Moses (32:44-52)
  - B. *Moses’ farewell blessings of Israel* (33)
  - C. Moses’ death (34)

<sup>12</sup> According to this construct by Christensen, the “law” of the firstborn or primogeniture of Deuteronomy 21:15-17 comes under the secular or civil law of Deuteronomy. But one wonders, can we really differentiate which text is secular and which one sacred or religious in the Old Testament?

## 4.2 INNER TEXTURE ANALYSIS OF DEUTERONOMY 21:15-17

### 4.2.1 Introductory observations

The inner texture interpretation of a text is basically “getting inside a text”; it is an exegesis (reading out from a text what is in it) rather than *eisegesis* (a practice of reading into a text what a person wishes to see there) (Robbins 1996b:7). The main focus of the inner texture analysis is searching the meanings and messages of the *words*, *phrases*, and *clauses* of the text itself. This interpretive system is an important part of a synchronic analysis of the Bible. A synchronic approach to the Bible lost its central attention during the peak of the historical-critical or diachronic scholarship of the nineteenth century and the first half of the twentieth century. However, from the latter part of the twentieth century, the attention swung back to this method, as students of the Bible rediscover and re-appreciate that “all the data lie in the text itself” (Robbins 1996b:36).

Even in Germany, the traditional home of the historical-critical method, winds of change seem to be blowing. There seems to be a conspicuous paradigm shift. For example, Erhard Blum’s “holistic diachronical exegesis,” Christof Hardmeier’s “text-pragmatical exegesis,” and Helmut Utzschneider’s “literary-aesthetical exegesis” – “all plead for more attention to the final form of the biblical text and for an integration of synchronical and diachronical exegetical perspective” (Jonker 2004:499-608 and his bibliography for some of the works of Blum, Hardmerer, and Utzschneider).

Following Robbins’ (1996b:7-39) inner texture analysis, we shall analyse the repetitive, progressive, opening-middle-closing, narrational, argumentative, and sensory-aesthetic textures and patterns of Deuteronomy 21:15-17 below. But before we engage in the analyses of these textures and patterns, it is important to first analyse the text and translations with the semantic fields of key words.

### 4.2.2 Text and translations

The following is the BHS text of Deuteronomy 21:15-17:<sup>13</sup>

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<sup>13</sup> The text here is vocalised for textual analyses. Otherwise, non-vocalised Hebrew words are used in this research. The text is presented in a phrasal/clausal arrangement or divisions for clearer reference and analyses.

~yvir' yTiv. vyab !lyk.ti-yk<sup>15a</sup>  
 halhf. txähw>hbllha] txäh<sup>15b</sup>  
 halhfHw>hbllhaj' ~ynb' Al ävdl y]<sup>15c</sup>  
 `ha[mf.l rAkBh; !Bh; hya<sup>15d</sup>  
 Al +hybyl-rva] taewynB'-ta, Al jxih; '-AyB. hyw<sup>16a</sup>,  
 `rkBh; halhfH; !b, ynP-I [; hbllhajä!B; ta, 'rkB;l. l ky al<sup>16b</sup>  
 ryk<sup>17a</sup>. halhfH; !B, rkBh; ta, yki<sup>17a</sup>  
 Al +acMyl-rva] l kB. ~yhä. yPä 'Al tt,l<sup>17b</sup>  
 Anäo tyvärE 'aWh-yk<sup>17c</sup>  
 s `hrk<sup>17d</sup>Bh; j Pivmi Al B<sup>17d</sup>

#### 4.2.2.1 Textual variations

The Samaritan Pentateuch and one Hebrew manuscript (V<sup>Ken 69</sup>) do not have the definite articles for the words txäh and txähw in verse 15b (cf. BHS notes). The MT scholars might have added definite articles to render the reading grammatically correct. However, the differences do not create any significant change in meaning. The Samaritan Pentateuch reads the last word of verse 15d hawnXI while the MT reads haynXI. The use of the two different long vowels, qrX [w] (MT) and qrx [y] (Samaritan Pentateuch) also do not result in a change of meaning. The MT could have changed the vowel for a sound play to rhyme with hya' at the beginning of the clause. The Vulgate perhaps has rKby. (to make one firstborn [firstborn]) as an alternative reading to ryk<sup>17a</sup>. (to recognise [the firstborn]) in 17a (cf. BHS note), which rendering of the clause would thus read, “instead he must make the firstborn of the hated wife the firstborn” other than “instead, he must recognise the firstborn.” The *waw* consecutive is added to Al in the beginning clause of verse 17b in the Samaritan Pentateuch, LXX, Syriac, and Vulgate (cf. BHS note). Adding the *waw* consecutive would provide a stronger reason for according the right of the firstborn to the actual firstborn – “so/thus, the right of the firstborn son belongs to him.” Apart from these slight variations, which do not result in any significant change of meanings, most major manuscripts – Samaritan Pentateuch, LXX, Syriac, Vulgate, and Aramaic Targum – have the same text as that of the BHS text above.

#### 4.2.2.2 Philological and semantic notes with analysis of translations

Meanings and concepts of words and phrases are different from language to language and culture to culture. Thus no translation is a perfect translation in a true sense. Translation of one language to another language is more of an interpretive translation or a dynamic equivalent. The LXX, the first translation of the Hebrew Bible into another language, is no exception. In fact the LXX is a translation as well as an interpretation (Kraus & Wooden 2006:5). We are not sure whether the Hebrew version from which the Greek LXX translation was made is the same version as that of the BHS/MT as we have it today (for further discussion on this and other issues surrounding the LXX translation, see Krause & Wooden [eds.] 2006). However, for this research, our analysis of the LXX and English versions will be based on the BHS/MT. In so doing, semantic fields of some of the key words will be explained to help us have an informed understanding of different versions.

~yvn ytv vyal !yyht-yk

The Hebrew particle  $\text{y}k$  has a wide range of usage.<sup>14</sup>  $\text{y}k$  in verse 15 is translated  $\epsilon\alpha\upsilon\tau$  in the LXX and in line with this translation, it is rendered “if” in most of the English translations (but see Christensen’s 2002:476 who renders it “when” and New Living Translation and NET Bible which translate it “suppose”). As verse 15 is a conditional clause, the Hebrew word  $\text{y}k$  in this verse is best translated “if.” This follows that of the Mesopotamian casuistic law formula of the “if ... then...” However,  $\text{y}k$  in verse 17a begins an adversative clause, thus most English versions render it either “rather” or “instead.” In verse 17c,  $\text{y}k$  is with a causal clause, so is translated either “for” or “because.”

The root word for  $\text{!yyht}$  (Qal, imperfect, 3<sup>rd</sup> person, feminine, plural) is  $\text{hyh}$  (to be, become [Qal]; to be done [Niphal]). There have been discussions concerning the translation of the Hebrew word  $\text{hyh}$ , especially when it becomes a *waw* consecutive  $\text{hyh}w$  (imperfect  $\text{yhyw}$  [verses 15d & 16a]). Henry St. John Tackeray (cited in Hiebert 2006:87) in his discussion of this translation equivalent points out that the  $\text{hyh}w$  formula usually includes a second *waw* that introduces the adjoining clause (e.g., Gen 17:1). The usual LXX translation of the  $w \dots \text{yhyw}$  formula is  $\epsilon\gamma\epsilon\eta\epsilon\tau\omicron \dots \text{kai}$  which reflects an

<sup>14</sup> With causal clause: *for, because*; with ‘object’ clause: *that*; with relative clause: *that, which*; with purpose clause: *so that*; with conditional/temporal clause: *if, when*; with concessive clause: *although*;  $\text{ht}[\text{y}k$  or  $\text{za} \text{y}k$ : *then (by) now*; with adversative clause: *rather, yet, nonetheless, except*; as emphatic or phatic particle: *surely, indeed, now, then, in fact, namely, how*; as adverb of consequences: *so, therefore*;  $\text{!k} \text{y}k \dots \text{rvak}$ : *just as ... so too*;  $\text{!k} \dots \text{y}k$ : *as ... so*; as interrogative particle; as interrogative pronoun: *who?*; as preposition: *despite, on account of*;  $\sim\text{a} \text{y}k$  in various senses (cf. Clines 1998:383-391; for various uses as compound conjunctions, see also BDB 2000:471-475).

evident concern to reproduce the Hebrew quantitatively (for further discussion, see Hiebert 2006:87-88). Thus **lyyht** verse 15a may be translated “they are” while **hyhw** in verse 15d is rightly translated “but” and verse 16a “when” in most English versions while the LXX have it *kai. estai* (then it shall be).

The Hebrew nominal **vja**, meaning man/male, one/someone, husband, armed man/warrior, mortal, male animal, mankind (Clines 1993:221-237), is one of the most frequently used words in the Old Testament, occurring more than two thousand times, almost four times as often as **-da**. **vja** as ‘man’ is the opposite of **hva** ‘woman or female’, and as ‘husband’ it is the opposite of **hva**, ‘wife’ (see Gen 3:6, 16; 29:32; Num 5:12-31; 30:6-8 [7-9]; Deut 24:1-4; 1 Sam 1:8, etc). The only instance where a word other than **vja** is used to refer to the husband seems to be **l [b** (2 Samuel 11:26; cf Hamilton 1997:388-390; Bratsiotis 1974:222-235 for metaphorical and figurative usages of **vja**). The **vja** in the present text is translated **anqrwpw** (a man) in the LXX. The Akkadian equivalent is *awilu* (free and land owning/holding man), the central focus or test case of the Mesopotamian law collections. Thus Greek **anqrwpw** and English “a man” (all versions) are corresponding forms of the Hebrew **vja**.

**-yvl** (translated “wives” in all the versions) is the irregular plural form of **hva**, which means ‘woman’, ‘wife’, ‘female’, or ‘animal’ (BDB 2000:61). It can also be used for an animate object (thing) (Clines 1993:404-411). Its basic meaning is woman/female and its secondary usage is wife. The word **hva** appears 782 times in the Old Testament, most frequently in narratives – Genesis (152 times), Judges (69 times), 1 Samuel (54 times), 2 Samuel (49 times). The irregular use of **-yvl** as the plural form of **hva** which also has an irregular construct singular form **tvā**, is one thing that puzzles Hebrew grammarians. According to Hamilton (1997:537-540), this unique plural form may have been influenced by the equally unique plural form of **vja**, which is **-yvlā**. But according to Kohler and Baumgartner (1994:93), these two words have no connection. The plural **tvā** occurs only in Ezekiel 23:44. Why the plural of “wife, woman” is written as a masc. pl. **[-y ḥ]** instead of a fem. pl. **[ṭ-]** is not clear, but one novel suggestion is that plurals in **ṭ-** denote plurality of single entities, while those in **-y-** denote plurality of those things that form groups. Thus, the plural of **hva** and **ryl**, “city,” both feminine words are plurals with **-y-** because women are considered in relation to polygamy (like in the present text) and cities in relation to a larger area (Hamilton 1997:538). The word **-yvl** could possibly be a derivation from the verb **vla** (Akkadian *enešu*, ‘be weak,’ and Arabic *’anuṭa*, ‘be woman-like, feminine’). If **-yvl** is a derivation from **vla** ‘be weak’, ‘sick’, ‘to

carry’), it has a connotative meaning of the frailty of a woman. In the Old Testament, *Ḥā* occurs in 2 Samuel 12:15 (“and he [the child Bathsheba had borne to David] became ill”). The verb is also found in Ben Sirah 11:12 (“Another goes his way, a brokenhearted drifter, lacking strength and abounding in weakness” [PW Shehan, *Wisdom of Ben Sira*, AB, 1987: 235]). But there is also a good probability that Hebrew *ḥva* provides us with an instance of a primary noun (for various figurative and metaphorical use of *ḥva*, see Kühlewein 1997:187-191).

This phrase describes a scenario of a polygamous patriarchal family culture. The practice of polygamy was another clear manifestation of patriarchy in ancient Israel. Islamic law limits a man to a maximum of four wives at a time. There is no evidence of the Old Testament limiting a man to two wives. Thus “two wives” here must be read as a conventional way of referring to polygamy. Based on numerous examples of polygamous marriages in the Old Testament (see below), it would appear that polygamy was a common and accepted phenomenon, at least for free and landholding men. Although the Old Testament does not provide conclusive reasons for the practice of polygamy, as in many other societies that practise polygamy including this writer’s Marâ society, posterity,<sup>15</sup> successor-son,<sup>16</sup> labour,<sup>17</sup> honour,<sup>18</sup> and marital sex<sup>19</sup> seemed to be the main reasons behind a man taking more than one wife. It would be interesting to know how an ancient Israelite man, (or a modern man for that matter) who defends polygamy, would feel about a society that practice polyandry.

The Old Testament also refers to concubines. Are concubines wives? If a man’s firstborn is the son of a concubine, can he be given the right of the firstborn son? The Hebrew word for concubine is *vgl yp*. The term *vgl yp* is a non-Semitic foreign word (Kohler & Baumgartner 1996:929), attested in no other Semitic language except Hebrew. For example, concubine may be expressed by *šugītu* or

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<sup>15</sup> This posterity reason seems to be the reason for the continual practice of polygamy in some societies today. For example, a Sudanese church elder, known to this researcher, took a second wife in 2003 for this very same reason of posterity.

<sup>16</sup> It is common in many traditional societies for a man to take a second wife if the first wife does not produce a son even if having more than one wife may not have been his original intention.

<sup>17</sup> For some peasant agricultural societies where women participate in farming and gardening, more wives mean more labourers to work in the farm, thus more production.

<sup>18</sup> Having many wives pointed to a man’s wealth and posterity as well as large kin and protective group. In some cases, it was the first wife herself who would persuade her husband to take more wives so that she would be freed from labour and enjoy the honour of being the first or principal wife.

<sup>19</sup> In some cultures, a man may not have sex with his wife during her pregnancy, child birth, and weaning time. This could take two to three years. Thus, having more than one wife will not deprive a man from sex for a long time.

*esirtu* in Akadian. Thus, either the word is *sui generis*, or else it came into Hebrew through some other avenue, such as an Indo-European language. The Hebrew word is perhaps influenced by Greek *pallavkh* (BDB 2000:811), which came into Latin as *paelex* (alongside *concupina*). But others (cf. Hamilton 1997:618-619) argue that the cognate does not necessarily lead to the conclusion that the Hebrew term was coined under Greek influence. *pallavkh* is used everywhere in the LXX to translate *vql yp*, except in 2 Sam 5:13 and Est 2:14 [which use *guvnh*] and Ezek 23:20 [which use *Caldaivoi*]. Some propose that the word comes from the Philistines, a Mediterranean people who had contacts with the Hebrews and who were of Indo-European stock. It is worthy of note that from the days of the conquest on, almost everybody in the Old Testament of whom it is said he had a concubine is from either the tribe of Judah or from Benjamin, these were in closest contact with the Philistines<sup>20</sup> (Hamilton 1997:618-619 and literature cited there).

Although there are examples of a man selling his daughter as an *h̄ma* (maidservant) for the purpose of concubinage (Exod 21:7ff.), concubines are in a way legal wives. The Latin *concupina* (somehow corresponds to the “mistress” of a modern married man) does not seem to fully reflect the concept of the Hebrew *vql yp*.<sup>21</sup> Thus, it is possible that one of the wives in Deuteronomy 21:15-17 could be a concubine. Even if the firstborn is the son of a concubine, he still must be accorded the firstbornship.

## h̄w̄m̄x̄ t̄x̄ah̄w̄ h̄b̄w̄h̄a t̄x̄ah̄

<sup>20</sup> There were seven men who had a concubine, starting with the period of the Conquest: (1) Caleb, a Judaeon (1 Chr 2:46, 48); (2) Gideon (Jdg 8:31), from the tribe of Manasseh, and from Ophra (Jug 6:11) near Beth Shean (where archaeological excavation has unearthed evidence of Philistine occupation); (3) an Ephraimite Levite who took a concubine from Bethlehem in Judah (Jdg 19:1-30); (4) Saul, a Benjamite from Gibeah (2 Sam 3:7; 21:11); (5) David, a Judaeon (2 Sam 5:13; 15:16; 16:21, 22; 19:5 [6]; 20:3; 1 Chr 3:9); (6) Solomon, a Judaeon (1 Ki 11:3); (7) Rehoboam, a Judaeon (2 Chr 11:21), the last specific person identified in the Old Testament as having a concubine. In the patriarchal period Nahor (Gen 22:24) and Esau's son Eliphaz (Gen 36:12) each had a concubine, while Abraham and Jacob had two. Keturah is so styled (1 Chr 1:32), but Hagar is not, except indirectly in Genesis 25:6 (“He gave gifts to the sons of his concubines”). Jacob's Bilhah is so styled (Gen 35:22), but Zilpah is not. All four women are also called *h̄v̄āi* wife, or *-ȳv̄i* , wives; that is, Hagar (Gen 16:3); Keturah (Gen 25:1); Bilhah (Gen 30:4); Zilpah (Gen 30:9); Bilhah and Zilpah together (Gen 37:2). In no other place in the Old Testament is a woman both *h̄v̄ā* and *vql yp*. This shows that a *vql yp* is in essence a wife. For example, in Judges 19-20 *vql yp* is used 11 times, but *h̄v̄ā* is never used. In addition to being available to the man for sexual congress, concubines, at least in the monarchical period, were given responsibility for caring for the palace (2 Sam 15:16; 16:21; 20:3, all in light of David's quick exit from Jerusalem under duress). To attempt to gain sexual access to the concubines of another in royal office was tantamount to usurpation of the throne (2 Sam 3:7; 16:21; possibly 2 Ki 2:17, 21-25). From the story in Judges 19-20, it would seem that a concubine might be a first and sole wife. But this is an exception. Normally the concubine is an auxiliary wife (Engelkern: *Nebeufrau*). She is subordinated to the *h̄v̄āi* and is a substitute birth-mother at the disposition of her mistress (Hagar, Zilpah, Bilhah). On the other hand, neither is the concubine a slave (Hamilton 1997:618-619).

<sup>21</sup> Perhaps the Marâ word “*nôtho*” (“auxiliary wife” mistranslated as “concubine” by Parry 1932:340-41), a term used in opposition to “*nôbei*” (“principal wife” or “wife from royal clan”; see Chapter Three) will explain the Hebrew *vql yp* better.

The verbal root of **hbwhah** (“the being loved”) (Qal, passive participle, feminine, singular, absolute) is **bha** (to love): to be loved (Niphal); to lovers (Piel). Depending on its context, **bha** can also mean love, be lovable, joys of love, gifts of love, charm, loveliness. It is commonly used to describe romantic love (hetero-sexual love or carnal desire [BDB 2000:12] (Song of Songs; etc), parental love (Gen 22:2; 25:27-34; 35:16-19; 37:3-4; Prov 13:24); friendship affection (1 Sam 16:14, 21; cf. v. 21; cf. 18:3-8; 20:17; 2 Sam 1:26); and loving God (Exod 20:6; Deut 6:5; etc). It is used 32 times to describe God’s love (cf. Els 1997:170ff). It can be also used for liking or loving objects or actions (Clines 1993:137-138). The word is seldom used to express love from children to parents (BDB 2000:12). The **hbwha** (being loved) in verse 15b is translated in the LXX **hgaphmenh** (from **agapaw**, to love), which is usually used to describe wilful love (for example God’s love) instead of **filew** (friendship love) or **xroz** (romantic/hetero sexual attraction love), which would be a better rendering for this particular text. The LXX scribes must have felt that since the Hebrew word **bha** could be used for any kind of love, it would be most inclusive to translate **bha** here as **agaph**. Most English versions too translate **hbwha** as being loved.

The verbal root for the word **hawnXh** (Qal, passive participle, feminine, singular, absolute) is **anf**: to hate (Qal); to be hated (Niphal); to hate (Piel) (BDB 2000:971). This Hebrew verb **anf** is found in the Qal form 129 times. This includes 34 times as an active participle to mean an enemy and 9 times as a passive participle meaning unloved or abandoned. It has a wide range of usage and meanings. One of them is, like we have in our text, the use **anf** in opposition to **bha**. The word **hawnXh** here describes the husband’s feeling and attitude toward his favorite wife as opposed to the other wife who was merely tolerated or even rejected [**hbwhah**]. It has a meaning of ‘not to be able to endure a woman any longer’, that is, ‘decrease her status’; a woman who has been scorned (Kohler & Baumgartner 1996:1339; see Gen 29:31, 33; Prov 30:23; Sir 7:26; Is 60:15). The Aramaic uses the verb as a metonymy for divorce and so is the word used as a legal ground for divorce in the Laws of Hamurabi (LH §142)<sup>22</sup>. From this perspective, the hated wife in our text could well be a divorced wife. If so, the firstborn remains the firstborn even if his mother had been divorced.

Other usage and meanings of **anf** in the Old Testament include: the most intense hatred of the enemies of God (Ps 139:21-22), or that of a violent enemy (Ps 25:19); but it may, on the other hand, simply express that which is to be avoided, such as serving as a guarantor for a debt (Prov 11:15); the feelings of aversion for a poor man (Pro 19:7); or the aggravation of a neighbour who visits too often (Pro 25:17). At times the verb carries the ingressive sense of begin to hate, as God’s hatred of

<sup>22</sup> See Lipiński 2004:164-174

Ephraim at Gilgal (Hos 9:15) or his making Jerusalem, his beloved, an object of prey (Jer 12:8). Often *bha* and *anf* are found in contrast: “Jacob I loved, but Esau I hated” (Mal 1:2-3). Thus the loved wife and hated wife must be understood against these concepts and meanings of *bha* and *anf*. *bha* and *anf* also form a poetic word pair frequently found in antithesis: a time to love and a time to hate (Eccl 3:8; see also Ps 11:5; 26:5, 8; 45:7 [8]; Prov 12:1, etc).

In other cases, to hate *anf* is also synonymous with detest or abhor (Hebrew *b[ṭ]*): “I hate and abhor falsehood, but I love your law” (Ps 119:163; see also Amos 5:10; Prov 6:16; etc). God is also the subject (Deut 12:31; 16:22; Isa 1:14; 61:8; Amos 5:21; Prov 8:13) and object (Exod 20:5//Deut 5:9; Num 10:35; cf. Deut 7:10 2x; 2 Chr 19:2; Ps 68:1 [2]; 81:15 [16]; 83:2 [3]; 139:21) of *anf* (Konkel 1997:1256-1260).

The RSV chooses a milder term “dislike” for *hawnX* instead of a strong word “hate” to describe the state of the man’s relationship with one of his two wives while the NET Bible translates it “less loved.” When one dislikes someone or loves the person less than another, it does not necessarily mean he/she hates him/her. If the author of Deuteronomy wants to emphasise actual hatred here, the RSV translation would miss the point. The JPS Tanakh, NJB, and NASB translate it as “unloved.” The NIV and NLT make it active form – “he loves one but not the other.” The word “unloved” or the phrase “he does not love” too do not necessarily mean “hated” or “he hates.” Therefore, if the Hebrew author meant it “hated”, these translations would also miss the point. In line with the LXX, the KJV and GB translate *hawnX* as hated. It is true that the term is too strong to describe the relationship between a husband and one of his wives with whom he is still living. However, it is possible that this man in question had indeed married and is living with a woman he never loved or he came to hate her to the point of divorcing her. Besides, the Hebrew language does not have a middle term between *bha* and *anf*; if one is not loved, then one is hated.

*hawnXhw hbwhah -ynb Al -wdlyw*

The verbal stem for *wdly* (Qal participle, *waw* consecutive, perfect, 3<sup>rd</sup> person, common, plural is *dly*: to bear, bring forth (a mother bearing a child), beget (a father fathering a child) (Qal); to be born (Niphal); to bear, deliver (Piel): to beget (Hiphil); to be born (Hophal); to be registered (Hithpael)<sup>23</sup>. The verb appears 492 times in the Old Testament, most often in Genesis (170 times) and 1 Chr (117 times), no doubt because of the extensive genealogies in these books, in which *dly* features prominently. Most lexicons and dictionaries (cf. BDB 2000:408; Kohler & Baumgartner

<sup>23</sup> Cf. Hamilton (1997:455-460)

1995:411-412; Kühlewein 1997:544-546; Clines 1998:213-220; Schreiner 1990:76-80) give the Qal meaning of a mother bearing a child as the most commonly used form in conjunction with *hrh* (to conceive, become pregnant) (41 times) and *lyj* writhe (in pain) (30 times). When the man is the subject of the verb, the Hiphil form, *beget*, (beget of a father) is more commonly used (e.g., Gen 5:3, 4; 1 Chr 2:10, 11).<sup>24</sup> In our text, the subjects of *dlj* are the two wives. Most versions translate it “they (both the loved and hated) bear/have borne (sons)” except the NLT that renders “... give ... sons”. Note the suffix pronoun **l** (to him or for him). Both of the loved and hated wives have borne sons for the man. At this point, the question is, whose son would be the prime heir?

The Hebrew nominal *~ywb*, root *!b*, is one of the most common words in the Hebrew Bible occurring no less than 4850 times in the Old Testament, while its Aramaic equivalent *rb* occurs 19 times in the Aramaic and four times in the Hebrew parts of the Old Testament. The word has a wide range of usages: son or grandson in singular form and sons, children, descendants, people, clan/tribe/nation in its plural form (Clines 1995:185-226). For example, *larXyl ywb* (children of Israel, frequently having the sense of Israelites), *larXy ywb j bv ywb* (the sons of the tribes of the sons of Israel [Num 36:3], means the “tribes of Israel”), *!m[ ywb* (children of Ammon/Ammonites [Gen 19:38]), etc. *!b* is sometimes used of animals to denote offspring or a category or species), a member of a group (e.g., sons of God). Other first-class relationship terms occur: *tb* (daughter, 585x); *ba* (father, 1190 times); *~a* (mother, 220 times); *xa* (brother, 630 times); and *txa* (sister, 114 times (see Caragounis 1997:671-677)). *!b* also has a wide range of metaphorical and theological usages, for example, “son of man” (for further discussion on metaphorical and theological usages, see Kühlewein 1997:238-245; Haag 1975:147-159). The maximum use of this word in various expressions noted above demonstrates that the Old Testament is a patriarchal book and the Israelite society a patriarchal society. The Ancient Near East (Egyptian, Mesopotamian, and Ugaritic) cognates of the Hebrew word *!b* has the original meaning of “heir” and the idea that the oldest son is the father’s heir is ancient in Egypt as early as the Pyramid Texts (1538, 1841) (see Bergman & Ringgren 1975:145-147).

The LXX translates *~ywb* in verse 15c as children, submerging it with the verb *tekwsin* (they give birth [children]). The LXX scribes might have taken the word *~ywb* in a gender inclusive sense as is

<sup>24</sup> The nuances of the word *dlj* range from newborns (Exod 1:17, 18; 3:6,-10; 2 Sam 12:15), to children who have been weaned (Gen 21:8), to teenagers (Gen 21:14-16; 37:50; 42:22), to youths (2 Ki 2:24), to young men (Dan 1:4, 10, 15, 17) old enough to serve in foreign courts, to descendants (Isa 29:23), birth place or mother land (Gen 11:28; 24:7; 31:13, Ruth 2:11; Jer 22:10; 46:16; Ezek 23:15). On a very few occasions God is the subject of *dlj* (Deut 32:18: “You deserted the Rock, who fathered you”; Ps 2:7: “You are my Son; today I have become your Father”).

used in numerous cases in the Old Testament and so the RSV, NJB, KJV, and GB. However, it is translated “sons” by the NIV, JPS Tanakh, NASB, NLT, and NET. Although, both “children” and “sons” are possible renderings, the motif and emphasis of the text here indicate primarily, heirs who are sons, excluding daughters. Therefore, it would make “sons” a better rendering.  $\sim\text{y}\text{nb}$  in this text could also be hyphenated as “heir-sons.”

$\text{h}\text{ay}\text{n}\text{X}\text{l}$   $\text{r}\text{k}\text{b}\text{h}$   $\text{!}\text{b}\text{h}$   $\text{h}\text{y}\text{h}\text{w}$

Most lexicons and dictionaries translate the Hebrew nominal  $\text{r}\text{k}\text{b}$  as “firstborn” both human and animal (cf. Clines 1995:170-172; DBD 2000:114; Kohler & Baumgartner 1994:130-131; Arnold 1997:658-659; Tsevat 1975:121-127). There have been speculations concerning the identification of  $\text{r}\text{k}\text{b}\text{h}$  (the firstborn). The matter is complicated if the firstborn must be a son who is the “first of the womb” or who “first opens the womb” [ $\sim\text{Xr-rj}$  p] (Exod 13:1-2, 11-13). For animals, the issue is straight forward; it is maternal firstborn which is male. Could the Hebrew nominal feminine [ $\text{h}\text{r}\text{k}\text{b}\text{h}$ ] ‘birthright’ be a trace of Israel’s distant past of matrilineal culture where lineage and family office was passed down from mother to eldest daughter? Or could it be that  $\text{h}\text{r}\text{k}\text{b}\text{h}$  as a common word originally referred to any child that opens the womb regardless of sex? However, we do not have conclusive textual evidence to support these speculations.

Tsevat (1975:125), asserting that the firstborn, a concept frequently used in the laws of Exodus and Numbers and Ezekiel 20:26, especially in texts that treat human and animal firstborn together, was called “the first of the (procreative) strength” of the father, particularly in texts that deal with polygamy (Gen 49:3; Deut 21:17; cf. Ps 78:51; 105:36), while the phrase “one who opens (the womb)” defines the firstborn with reference to his mother, concludes that the definition of the firstborn as the one who opens his mother’s womb could not have been the predominant one.

Against this, Brin (1994:210-215) seems to be in agreement with the rabbinic and New Testament interpretation that the human firstborn must be a male that opens the womb. The rabbis make two conditions for someone to qualify as the firstborn: (1) ‘which opens the womb’, that is, the firstborn of its mother; (2) ‘a male’ – to exclude the case of a male that was born following a female (*b. Bek. 19a*; cited in Brin 1994:210-211). Luke connects Joseph and Mary’s presenting Jesus at the temple to the consecration of the firstborn male in Exodus 13:2: “Every firstborn male is to be consecrated to the Lord” (Lk 2:23, NIV). Based on these interpretations, there are two conditions to be qualified as the firstborn son of the father: (1) in a monogamous family, the firstborn son must be the one who opens his mother’s womb, that is, even if he is the eldest brother of all the brothers, if he has

bigger sister(s), he could not be regarded as the firstborn son (2) in a polygamous family, he must be the oldest of all the firstborn sons who open their mothers' wombs, that is, the one who does not open his mother's womb cannot be regarded as the firstborn of the father even if he is older than his half-brother who opens his mother's womb.

There is a problem or two in Brin's (1994:210-215) interpretation. To regard a son who opens his mother's womb as the firstborn of the family "not only did it stand in opposition to the emphatic patriarchal character of the Israelite family, but also it would have seriously damaged the idea and legal custom of primogeniture, especially in the case of contemporary (occasional) polygamy" (Tsevat 1975:125). The condition of being the firstborn as a son who opens his mother's womb (a son who is the firstborn child of his mother)<sup>25</sup> may be applicable for religious and cultic purposes, but it will not simply work in choosing the prime heir of the family. A man with many sons could end up having no firstborn to hold the family office and continue the family name and titles. Therefore, in this researcher's opinion, it is possible that there were two sets of laws of the firstborn son: (1) for religious and cultic purposes, he must be the one who opens his mother's womb; (2) for civil purposes of inheritance and succession, it would appear that the oldest son of his father regardless of whether he is the firstborn of his mother or not is regarded as the firstborn (see also Milgrom 1990:18). For this reason, the biological firstborn remains the firstborn for cultic purposes and in the father's eyes, while the firstborn as a family office was in some cases taken by any younger son. In other words, the title of the firstborn remains with the biological firstborn while the privileges or office of the firstborn may be taken by any other son<sup>26</sup> (Brin 1994:257-263; Milgrom 1976:337). For example, Reuben was referred to as the firstborn even after the privileges of the firstborn were given to Joseph (1 Chr 5:1: "The sons of Reuben the firstborn of Israel...").

In the same vein, Syrén (1993:135) contends that Reuben did not lose his birthright. Genesis 35:22 in itself carries no such implication and he was recognised as and accorded the status of firstborn from the beginning to the end of his life. Unlike Ishmael and Esau, there was no divine instigation to effect or sanction the reversal of Reuben's status of being the firstborn. It was left open for subsequent reflection to draw conclusions about cause and effect, and, accordingly, 1 Chronicle 5:1-2 offers not a story, but a theological rationale: Reuben himself had forfeited his birthright.

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<sup>25</sup> In most instances, the firstborn is of the father. The firstborn of the mother occurred in three limited instances: to stress the child's sanctity (Exod 34:19), to emphasise that he is not the father's firstborn (1 Chr 2:50), and to underscore the mother's status at the time of his birth (Deut 25:6). See Milgrom (1976:337).

<sup>26</sup> In the Chronicles, a younger son who is given the firstborn birthright is called var 'chief' (1 Chr 26:10-11) or *dygn* 'chief prince', not 'firstborn' *rkb* (Milgrom 1976:338).

[B]iblical sources clearly support Reuben's status as the firstborn of Jacob, and some efforts are required on the part of the Chronicler to strip him of that rank, efforts that have a strong flavor of harmonization and rationalization.... The common thread between Genesis and the rest of the Bible is Reuben's primogeniture, which is universally recognized, even the Chronicler, who is anxious to deprive him of his birthright, preserves the epithet (Syrén 1993:135).

Based on the above arguments, the רִכְבֹּ in the present text is best interpreted as the eldest son of the father. The qualification of the firstborn as the first fruit of his father's procreative seed (see below) does not necessarily mean that the firstborn is the first child of his father. The father could have daughters who were born before this son. But as sonlessness is equated with 'descendantlessness' in the ancient times, to refer to the first son as the first fruit of his father's procreative seed is warranted.

Al hyhy-rva ta wynb-ta Al yxnh ~wyb hyhw

A new and important word in this clause is אִלְיָחִיחַ (Hiphil, infinitive, construct, 3<sup>rd</sup> person, masculine, singular, suffix) from the verbal root לָחַץ. The common Qal meaning of this verb is to inherit, get or take as a possession or inheritance (BDB 2000:635-636). It also can mean to divide up as inheritance, allocate portions as inheritance, and distribute as inheritance (Piel); cause to inherit, leave as inheritance, give as inheritance, allot as inheritance (Hiphil); be allotted, be made to inherit (Hophal); inherit, take as possession for oneself (Hithpael) (Clines 2001:655-657; see also Kohler & Baumgartner 1995:686-688). Its nominative is הִלְיָחִיחַ (inheritance, property, permanent possession), occurs 221 times and the denominative verb in its various forms 59 times (Wright 1997:77).

Discovering that Arabic *nahala*, Ugaritic *nhl/nhlt*, and Phoenician *nhl* are all cognates of the Hebrew לָחַץ, Wright (1997:77) rightly writes:

The most common literal meaning of both verbal and nominative usages refer to the division of the land within the kinship structure of Israel and thus signifies the permanent family property allotted to the tribes, clans, and households of Israel. The sense of kinship and of specially significant property inherent in the words leads to a wide metaphorical use, of which the most theologically important is the use of both nom. and vb. to express the relationship between Israel and Yahweh. There is a flexible "triangular" usage of both לָחַץ and הִלְיָחִיחַ to signify the land as Israel's inheritance, the land as Yahweh's inheritance, Israel as Yahweh's inheritance, and even Yahweh as Israel's (or at least the Levites') inheritance.

This Hebrew Hiphil verb  $\text{Al ynhh}$  is a difficult word to directly translate into English.<sup>27</sup> It conveys a meaning of a man dividing up the family land/inheritance and distributing it as inheritance or passing on as inheritance (Clines 2001:657) to his heir-sons. Thus the LXX translates it as  $\text{katakIhrodoth}$  (no entry found) (“he shall divide by inheritance his goods”). English versions translate it “he wills his property” (NIV & JPS Tanakh), “he wills what he has” (NASB), “he assigns his possession as inheritance” (RSV), “the man comes to bequeath his goods” (NJB), “he maketh his sons to inherit” (KJV), “he appointeth his sons to be heirs (GB), “the man divides the inheritance” (NLT), and “he divides his inheritance” (NET).

Although fathers could make verbal wills, inheritances were normally divided among the heir-sons according to the existing inheritance tradition which the text in question is referring to (cf. Lipinski 1998:319-335 for this and other theological meanings of the word). Therefore, “to will his property” is not the most accurate rendering for the Hebrew word  $\text{Al ynhh}$ . The NLT and NET’s rendering of it as the dividing up inheritance seems to be the closest to the meaning. The concept of it in its Hiphil form is, “when he causes his sons to inherit what is his” (NET), which is the basic meaning of the text (see also Wanke 1997:731-734).

$\text{rkbh hawnXh-!b ynp-l [ hbwhah-!b-ta rkbI lkw al}$

The verbal stem of  $\text{lkw}$  (Qal, 3<sup>rd</sup> person, imperfect, masculine, singular) is  $\text{lky}$ . The most common usage is “be able to or be capable of” (Clines 1998:211-212; Job 31:23; 42:2; Jer 38:5; Hos 8:5). The word occurs 193 times in the Old Testament. It can also mean to bear, endure; be superior, be victorious, prevail, win, conquer, overrun, succeed (Wakely 1997:445; Clines 1998:211-212). In the Ancient Near East, the verb is well attested, occurring in Phoenician (as early as the Karatepe inscription, ca. 720 BCE) and Aramaic (Wakely 1997:445). According to Soggin (1990:72), the basis of the root is probably the bilateral  $\text{lK}$ , which has been expanded by the Yod prefix  $\text{Y}$  or by the interpolation of  $\text{h}$  (Aramaic  $\text{lhk}$ ). An interesting nuance of  $\text{lky}$  relating to our study is its Aramaic of Elephantine usage which has a specialised legal sense and, when negated by  $\text{al}$ , means to waive the right to go to court or what is not permitted by custom (Clines 1998:211). From this sense,  $\text{lky}$  in verse 16b can mean that a father cannot legally take away the right of his firstborn.

<sup>27</sup>  $\text{hIxn}$  has no convenient English equivalent. As noted above, its Hiphil verbal stem refers to the apportioning of the land (Deut 1:38; 19:3; 31:7; Jos 1:6). In the Qal and Piel stems, it means to receive land as apportioned (Exod 23:30; 32:13; Num 18:20; Deut 19:14; 21:16). While the land apportioned was called  $\text{hIxn}$ , the individual parts into which it was divided were each called  $\text{qlx}$  (meaning a share). However, in many cases the two nouns stand parallel to each other and are synonymous (Bess 1963:56-57). Perhaps how it is used in the Marâ language could explain the Hebrew word better. The Marâ root word for inheritance is *ryu*. To divide up or give property as inheritance is *ryuhi* while to receive inheritance is *ryuto*.

The BDB's (2000:407-408) rendering of it as "have power" is also of particularly important to our studies. When negating, it implies that a father does not have power to make his younger son the firstborn [rkb] (Piel, infinitive, construct) (to cause someone to become firstborn/to make one firstborn). rkb is translated prwtotokeusai ("to give the right of the firstborn") in the LXX. It also gives the impression that fathers were making their younger sons firstborns in the past. That would not be the case anymore.

The Hebrew nominal plural ~נפ; singular חפ (with over 2100 occurrences), has a wide range of usages: face, appearance, glance (with the eyes), person, someone, anterior, surface, front, etc (Kohler & Baumgartner 1996:937-944). It is also used metaphorically and idiomatically in a variety of ways. For Ben Sira, human face is the "mirror of the soul" (Sir 13:25; cf. Van der Woude 1997:995-1014). Two of the idiomatic usages of the phrase are particularly important for our study. חפ is used to describe honour and shame. For example, the expression ~חפ תב in Jeremiah 7:19 means public shame, something clearly visible to other people; a sad face was a sign of sorrow (Gen 40:7; cf. also 1 Sam 1:18; Neh 2:2; Prov 25:23; Dan 1:10); the light of his face for the pleasure of a king (Prov 16:15; cf. also 15:13; Eccl 8:1). חפ is also used to denote a person (Deut 7:10; 2 Sam 17:11) and can be used instead of a pronoun (Gen 32:21 [22]). "The face of God" is an expression of the presence of God (Exod 33:16; etc; cf. Van Rooy 1997:637-640; Thompson & Martens 1997:636-637). The phrase חפ-ל [ literally means "above the face of" which means ahead of, "in front of, in preference to" (BDB 2000:815-819).<sup>28</sup> Thus חפ-ל [ is translated uperidwn (to overlook, disregard, Passover, preference) in the LXX. The same concept is also implied in the English translations. The phrase has a connotation of shaming someone. To displace the eldest brother in favour of his younger brother would cause great shame to the former.

Thus the entire clause of rkb . . . (16b) is translated in different versions as: "he must not give the right of the firstborn..." (NIV, LXX), "he may not treat the son of the loved as the firstborn..." (RSV), "he may not treat as firstborn the son of the love one..." (JPS Tanakh), "he may not treat the son of the wife whom he loves as the firstborn..." (NJB), "he cannot make the son of the loved the firstborn..." (NASB), "he may not make the son of the beloved the firstborn..." (KJV, GB), "he may not give the larger inheritance to his younger son, the son of the wife he loves..." (NLT), and

<sup>28</sup> This Hebrew idiom is very similar to that of the Marâ. In the Marâ language, to honour someone by giving him the first position (to speak, etc) is called *hmia pasa* (literally, to put one's face [*hmia*] ahead [*pasa*] [of others' faces]).

“he must not appoint as firstborn the son of the favourite wife in place of the other wife’s son who is actually the firstborn” (NET)

As noted above,  $\text{rkb}l$  conveys a legal process of making a non-firstborn the firstborn. This concept is qualified by the prohibition of it by the use of a legal term  $\text{lkwy } al$  (he is not able/he is not allowed). Customarily, the firstborn son would hold the office of the firstborn. Therefore, in order for the younger son to hold this office, his father must first “make” him the firstborn. This seems to be the intention of the author when he uses the verb  $\text{rkb}l$  (to firstborn/to make firstborn) here. Thus, in this case, the NSAB, KJV and GB provide a better rendering than other versions.

$\text{ryky } hawmXh-!B \text{ rkbh-ta } yk$

The verbal stem for  $\text{ryky}$  (Hiphil, imperfect, 3<sup>rd</sup> person, masculine, singular) is  $\text{rkl}$ , meaning to be recognised (Niphal); misrepresent, deface, deliver, consider carefully (Piel); investigate, recognise, know (how to) (Hiphil); disguise, make known (Hithpael) (Fretheim 1997:108; Kohler & Baumgartner 1995:699-700). The root is widely attested in the Ancient Near East Semitic languages.<sup>29</sup> The word occurs 48 times (twelve times in Job-Proverbs; nine times in Genesis) and carries various senses, most commonly: to recognise a person or object (Gen 27:23; 37:33); to acknowledge a person (as in our text of Deut 21:17); to have regard for others (Job 34:19); to distinguish (Ezra 3:13); to take notice of (Ruth 2:10, 19). In Genesis 42:7, two senses of the word occur together; Joseph  $\text{rkl}$  (Hiphil) (recognised) his brothers, but he  $\text{rkl}$  (Hithpael) ‘disguised himself’, treating them like strangers (cf. 1 Ki 14:5-6; Fretheim 1997:108). The word also has a connotation of intentionality – “to have regard to” (Clines 2001:692-693); “be willing to recognise, acknowledge” (BDB 2000:647). Thus  $\text{ryky}$  is translated *epignwsetai* in the LXX (meaning to come to know/acknowledge/recognise/have regard for and so most English versions. This word conveys a legal connotation of according one what rightfully belongs to him/her.

$\text{acmy-rva } lkb \text{ } \sim ynv \text{ } yp \text{ } Al \text{ } ttl$

The verbal stem of the Hebrew infinitive construct  $ttl$  (to give) is  $!tn$ . This is a very common Hebrew word which has a wide range of meanings and usages – to give, present someone with something, offer, hand down, surrender, set, place, lay, turn someone with something; establish, make, do, allow, permit, deliver, put, grant, bestow (up on) depending on the context (cf. Kohler & Baumgartner 1995:733-735). This verb occurs in Hebrew only in the Qal and in the Niphal forms occurring about 2000 times (Labuschagne 1997:775). Clines (2001:784-815) discovers that this

<sup>29</sup> On the debate over whether there are two  $\text{rkl}$  roots, see Lang (1998:424-425); and Ringgren (1998:431-432).

verb is most commonly used together with הַלְכִי to describe God's gift of land to the Israelite tribes<sup>30</sup> as well as the handing down of the family property [הַלְכִי] as a *gift* (cf. Gen 25:5; Deut 21:17; 2 Sam 9:9). לָתַן (to give) is thus used here to imply that the father in question received the family land in question as a gift from his forefathers who in turn received it as a gift from Yahweh.

The translation of the Hebrew idiom ~שְׁמִינִי יָדָא as "two-thirds", is adopted here by this researcher. In LXX, it is translated διπλῆ meaning double/two-fold, literally, two mouths. Out of 490 occurrences in the Old Testament, הָפֵה is mostly used in a general sense for 'the mouth of humans and animals', as well as for 'openings'.<sup>31</sup> The writer of Deuteronomy seems to have particularly chosen this word to emphasise the relationship between mouth (food) and land, as the inheritance to be distributed is basically land which produces food. With regard to the meaning and idiomatic usage of ~שְׁמִינִי יָדָא, opinions are divided. Some, in line with this researcher's translation, contend that it is a two-third of all the estate. Others argue that it is a double portion, that is, the equivalent of equally divided one share plus an additional share (see below under the "intertexture" for further discussion on the meaning of ~שְׁמִינִי יָדָא).

The Hebrew word לְכָל (all, every) does not always represent a hundred percent numerical value. It is a relative term that describes the completeness or a large number. The root word for אָצַמְ (Niphal, imperfect, 3<sup>rd</sup> person, masculine, singular) is אָצַמ, meaning to find, reach, suffice, meet by chance (Qal); be found (Niphal); to cause to find, present something, make something befall (Hiphil). The root אָצַמ, common throughout the Ancient Near East, occurs only as a verb in the Old Testament about 450 times (mostly in the Qal). Besides certain special uses of אָצַמ, the Hebrew verbal root possesses two primary fields of meaning: "to find," and then various spatial nuances (reach, overtake, capture, obtain, etc.). To find אָצַמ is a result of וָצַב (Piel, seek/search) - these two words are normally paired and could refer to a search for: animals (1 Sam 10:2; Jer 2:24), people (Gen 37:15; Josh 2:22; Cant 3:1), or records (Ezra 2:62; Neh 7:64; Est 2:23) (Grisanti 1997:1061-1063; see also Wagner 1997: 465-483).

The phrase אָצַמְ-רַבָּא לְכָל is translated παντων ων αυ ευρεθη in the LXX. The same concept is applied in most English translations which render it as "of/from all he possesses." The combination

<sup>30</sup> Cf. Gen 12:7; 17:8; 24:7; 26:3; 28:13; 35:12; 48:4; Exod 6:4; 12:25//Deut 5:16; Exod 32:13; Lev 14:34; 20:24; 25:2; Num 13:2; 15:2; 27:12; Deut 1:8; 8:10; 12:9; 21:23; 26:1; Jos 1:6; 5:6; 11:23; 13:8; 14:3; 1 Ki 8:34//2Chr 6:25; 2 Ki 21:8; Jer 7:7; Ezk 36:28; Ps 135:12; Neh 9:8; 2 Chr 20:7.

<sup>31</sup> The specific use of it as portion (measurement) is similar to the Marâ language use of the word "mouth" to describe a morsel (mouthful) of food of cooked food.

of *lk* and *acm* here in reference to the estate gives the impression that the father must distribute all his estate to his heir-sons, with the prime share to the firstborn. He should not hide anything or leave any portion un-inherited.

### Ana tyvar awh-yk

The phrase *ana tyvar* is translated “the first of his children,” arch. *teknwn autou* in the LXX. It is variously translated in the English versions: “the first sign of his father’s strength” (NIV), “the first issue of his strength” (RSV), “the first fruit of his vigour” (JPS Tanakh, NJB), “the beginning of his strength” (NASB, KJV), “the first of his strength” (GB), “who represents the strength of his father’s manhood” (NLT), and “the beginning of his father’s procreative power” (NET). The meaning of all these translations is more or less the same. The Hebrew nominal *tvār* can mean head, beginning, chief, first, earliest, first fruit, starting point, what comes first, the first and the best, choicest portion (cf. BDB 2000:912; Kohler & Baumgartner 1996:1169-1170). It occurs 51 times in the Old Testament, frequently as the “first fruits” of produce (Lev 2:12). Israel was thus wholly the Lord’s, the first fruits of his harvest (Jer 3:2). It can also be descriptive of the highest quality, as in “wisdom is supreme” (Prov 4:7) cf. Arnold 1997:1025-1028). *ana* (masculine nominal singular construct with 3<sup>rd</sup> person suffix) means “his vigour/strength”. The nominative *!ana* occurs at least 12 times in the Old Testament. It is euphemistically used for the regenerative power, sexual virility (Gen 49:3; Deut 21:17; Ps 78:51) It is also used for physical strength (Job 18:7, 12; 40:16; Prov 11:7; Isa 40:26, 29; Hos 12:3 [4] and wealth (Job 20:10; Hos 12:8 [9]) (cf. Wakely 1997:315-321; Clines 1993:155).

The LXX’s rendering of it as “the first of his children” somehow shallows up the deep and significant meaning of the Hebrew *ana tyvar*.<sup>32</sup> Being the first fruit of the father’s procreative seed (the undiluted, pure, solid semen/sperm/seed) is given as the reason, qualified by the purpose particle *yk*, for according the prerogatives to the firstborn son. However, from the tradition and nuances of primogeniture, this could not have been the only reason for according prerogatives to the firstborn (we shall return to this later in the present chapter).

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<sup>32</sup> From a Marâ perspective, the Hebrew phrase *ana tvār* could be translated “the first fruit of his procreative seed.” The word “seed” is used as euphemism for semen in the Marâ language – hence *thei hmiatua* (connoting the first fruit of the first seed), *chi hroh* or *chi pata* (living or fertile seed), and *chi thi* (dead or infertile seed) to describe one’s first child, fertility, and infertility respectively. Male impotence is referred to as *chapaw a chā leipa* (one who is no man, meaning who could not produce a seed that would produce a child). As no pre-marital sex for both husband and wife is assumed in the Marâ society, the firstborn of both a man and woman is thus regarded as the first fruit of the first ever planted man’s semen-seed, carrying a concept of purity, undilutedness, and solidness.

hrkbh j pvm Al

hrkbh j pvm is translated as *kaqhkei ta. prwtotokia* (to be proper or fitting of the birthright/to him belongs the birthright) in the LXX. It is interesting that the word *hrkb*, meaning “firstborn’s privilege” (Clines 1995:173), “rights of firstborn” (BDB 2000:114), “position and right of the firstborn” (Koehler & Baumgartner 1994:131), “right of the firstborn” (Tsevat 1975:125), or primogeniture is a feminine nominal form while *rkb* (the firstborn son) is a masculine nominal. Could this be a remnant of matrilineal where the birthright of inheritance and succession belonged to the firstborn daughter? As discussed in Chapter Two, this was the case in Elam. So there is a possibility that this is a trace of distant antiquity matrilineal “Israel” where genealogy was traced through matrilineal descents and inheritance and succession passed down to matrilineal descendants, with the firstborn daughter as the prime heir. The verbal meaning of *rkb* is to bear early/first fruit, make somebody firstborn (Piel); be made a firstborn (Pual); and to bear first child (Hiphil). The prevalence of the nominal *rkb* (122 times), coupled with the rarity of the verbal forms (4 times, and all in derived stems), suggests the original meaning of the nominal “firstborn” for this root (Arnold 1997:658-659).

The root word of *j pvm* (noun, common, masculine, singular, construct), that is, “right, legal right, judgment, decision by arbitration, legal specifications, legal case, legal claim, act of doing justice, governing, jurisprudence” is *j pv* (to judge). Most lexicons and dictionaries (e.g., Liedke 1997:1395-1397; BDB 2000:1047-1048; Johnson 1998:86-98; etc) agree that this is a legal term. The word is found in Samaritan (*mišpat*), Ugar. (*mtpt*), and Phoen. (*mišpt*). It occurs 425 times in the Old Testament: 84 times in the Pentateuch, most frequently in Deuteronomy (37 times); 74 occurrences in the historical books, mostly in Kings (28 times) and Chronicles (22 times); 47 times in the Wisdom Literature, the word predominates in Job (23 times); Proverbs (19 times); and most frequently in the prophetic writings (144 times), occurring mostly in Isaiah (41times), Jeremiah (32 times), Ezekiel (43 times); and 27 occurrences dispersed throughout the Minor Prophets.

It is no surprise to see the use of the word *j pvm* in the primogeniture law of Deuteronomy 21:15-17 since the word has decided judicial connotations – the process governing the settling of some dispute, whether between human parties or between God and the Israelites, or the actual verdict itself. The judges are not to show partiality in their judgment (Deut 1:17), for in executing their office, they are acting on God's behalf: “judgment belongs to God” (cf. Zech 7:9; 8:16) (cf. Enns 1997:1142-1144). Clines’ (2001:556-564) rendering of this word as “place/seat of judgment, court” or “legal right/entitlement” is particularly relevant for its usage in the present text (cf. Jer 32:7, 8;

Ezk 21:32). Hence the phrase *hrkbh j pvm* in verse 17d may also be translated as the court or office of the firstborn.

The following then is this researcher's translation (from a Marâ reception perspective to some extent) of Deuteronomy 21:15-17:

<sup>15a</sup> If a man has two wives, <sup>15b</sup> one loved and the other hated, <sup>15c</sup> and both the loved and the hated bear him sons, <sup>15d</sup> but the firstborn is the son of the hated wife; <sup>16a</sup> when he divides up his estate and gives as inheritance to his sons, <sup>16b</sup> he is not allowed to make the son of the beloved wife the firstborn above the son of the hated wife who is the actual firstborn. <sup>17a</sup> Instead, he must recognise the actual firstborn, the son of the hated wife, <sup>17b</sup> and give him two-thirds of all he possesses, <sup>17c</sup> for he is the first fruit of his procreative seed; <sup>17d</sup> the office of primogeniture belongs to him.

Above we analysed textual variations, semantic notes, and translation variations and provided this research's own translation of the text. Our next task is to engage in an analysis of the repetitive, progressive, opening-middle-closing, narrational, argumentative, and sensory-aesthetic textures and patterns of Deuteronomy 21:15-17. Based on its contents and nature some textures and patterns may be more elaborate and relevant than other textures and patterns.

### 4.2.3 Repetitive texture and pattern of Deut 21:15-17

“Repetitive texture resides in the occurrence of words and phrases more than once in a unit. When the same word occurs at least twice in a text, the result is repetition. Multiple occurrences of many different kinds of grammatical, syntactical, verbal, or topical phenomena may produce repetitive texture” (Robbins 1996b:8). The repetitions, according to rhetorical techniques, exhibit major characters, topics, and emphasis, and “provide an overarching view of the texture of the language that invites the interpreter to move yet closer to the details of the text” (Robbins 1996b:8). It is difficult to determine the central character in Deuteronomy 21:15-17 – whether the man [VJā], the opening subject and the father of the firstborn, or the firstborn son [rkb], the closing object. One could also argue that marriage and family is the central theme of Deuteronomy 21:15-17. Based on the statement, “for he [the firstborn son] is the first fruit of his [the father's] vigour,” verse 17c seems to suggest that the central character of the text is the father. However, from a careful analysis of words that are repeated several times in this short text (see table below), we could argue that the firstborn and his birthright (primogeniture) is the central motif of the text.

***Repetitive texture pattern in Deuteronomy 21:15-17***

v. 15	yk	hyh	vyaḇ	-ymv	txa	hbha	hanX	!b	rkb
		hyh	Al		txa	hbha	hanX	!b	
							hanX		
v. 16		hyh	Al			hbha	hanX	!b	rkb
		hyh						!b	rkb
								!b	
v. 17	yk		Al	-ymv			hanX	!b	rkb
	yk		Al						hrkb
			Al						

Based on the repetitive employments of the words rkb ‘firstborn son/to make firstborn’ (five times), !b ‘son’ (six times), Al ‘for/to/belonging to him’ (six times), hyh ‘he is/was’ (four times), hbha ‘beloved wife’ (three times), han ‘hated wife’ (five times), txa (one [loved] but one [hated]), and -ymv (two – two wives of a man, two portions for the firstborn), one could say that this text is about a polygamous patriarchal family and the prerogatives of the firstborn son in that patriarchal family. Thus we could confidently entitle Deuteronomy 21:15-17 as primogeniture or the rights of the firstborn son in the patriarchal family. The repetition of hanX ‘hated wife’ (five times), the mother of the actual firstborn, further adds impetus to the primogeniture theme that even if the firstborn son is the son of the hated wife, his birthright may not be taken away by his father in favour of the son of his beloved wife [hbha] (three times). In all the five mentions of rkb (firstborn son), nowhere is the third person masculine suffix Arkb (*his* firstborn) used. Always it is *the* firstborn or *the* birthright of *the* firstborn. This could point to primogeniture as an independently (that is independent of a father’s manipulation) established office of the patriarchal family.

Along with the firstborn son, other sons [-ymb], too, would receive inheritance from their father’s estate, with the firstborn receiving two-thirds of the estate. There is no mention of daughters. This shows that daughters are excluded from inheritance of the paternal estate. The text is silent on whether or not wives could have a say concerning the affairs of their sons. However, since the father may displace the actual firstborn son in favour of the younger son who is indeed the son of

his beloved wife indicates that the beloved wife could have tremendous influence on her husband, including matters concerning the welfare of her own children. Because the right of the firstborn son may not be violated even if his mother is the hated one, we can deduce that this instruction is also interested in protecting the rights and privileges of all the wives.

#### **4.2.4 Progressive texture and pattern of Deut 21:15-17**

Progression emerges out of repetition of words, phrases, clauses, and concepts. “Indeed, repetition itself is one kind of progression, since movement from the first occurrence of a word to another occurrence is a forward movement – a progression – in the discourse” (Robbins 1996b:10).

##### **4.2.4.1 Progression from wives rivalry towards the curtailment of a father’s authority to appoint the firstborn**

V.15a: *A man has two wives.* A polygamous marriage and family introduced.

V.15b: *One wife is loved and the other hated.* Wife rivalry in a polygamous marriage and family begin. Except for the allegorical interpretations of ancient commentators, for example, Ambrose who says that the two wives are not two souls, but two forms of one soul and the true firstborn is the offspring of holiness (Lienhard 2001:309-310), no scholars have attempted to give extensive and convincing reason concerning the presence of beloved and hated wives in a polygamous marriage. In this researcher’s opinion, the presence of such a situation is real in a polygamous family, thanks to the practice of marriage of convenience for the purpose of posterity, successor-son, labour, honour, and marital sex other than love and for some other reasons as in the marriage between Jacob and Leah (Gen 29:16-27, etc). Or it could also be that a man could have come to hate his wife later in their marriage due to some reasons. In both cases, to protect his children (and wife) from shame and for the sake of the family integrity, a man could consciously choose not to divorce his wife whom he never loved or whom he came to hate. Although a monogamous marriage does not necessarily immune from family strives, a polygamous family would appear to be more vulnerable. This must have been the reason God created only one ḥvā, not ~vḥ, for one vjā. This implies that God’s original design for marriage was heterosexual monogamous marriage (one husband [man], one wife [woman]), not polygamy [one husband [man] with two or more wives [women]], or polyandry (one wife [woman] with two or more husbands [men]).

V.15c: *Both the loved and the hated bear him sons*. The verb *dlj* (to bear/give birth child) indicates that both of the wives and their husband are fertile, the heart desire of every wife and husband. In the Old Testament, childlessness [*rq*] is a misfortune (Gen 30:1-2) and may be the result of punishment, among other things (Gen 20:18; 2 Sam 6:23; cf. Hamilton 1997: 106, 509-510, 534-535), unless it is a special prophetic call involving celibacy (Jer 16:2 - Caragounis 1997:672). Infertility or childlessness is considered a curse, the worst thing to happen to a wife in the ancient Israel (King & Stager 2001:48). A childless woman suffered humiliation, abuse, and even divorce.<sup>33</sup> The greatest curse in ancient Israel was sterility and the cutting of progeny, leading to the demise of the family (Deut 28:18) (Perdue 1997b:227). In some cases, a wife would secretly be happy if a co-wife (or rival wife) remained childless, especially sonless, as the sonless wife would be out of competition for receiving the husband's favour and love as well as inheritance for the sons. As much as fertility is regarded as a blessing from Yahweh, to have many sons was regarded as a special blessing (Deut 28:4-11; 1 Chr 28:5; Ps 127:3-5). A wise son causes his parents to rejoice (Prov 23:24-25), while daughters, who leave the parental house, involve the problem of the transfer of the inheritance (Num 27:1-3; 36:2-9).

By far the most usual meaning of *!b* in the Old Testament is "son" begotten by a father (Gen 4:1, 25; 21:2). Sons have moral duties towards their parents (Prov 1:8; 4:1) and are probably responsible for their father's debts (2 Ki 4:1); they also share in the punishment for the sins of their fathers (Jos 7:24-25; 2 Sam 21:1-9). The earliest protest against this is registered in Deuteronomy 24:16-17 (cf. Jer 32:18; Ezek 18:2) and develops into the doctrine that every man will be responsible for his own sins (Ezek 18:1-20). A rhetorical emphasis of fertility, even fertility to produce a son (sons), is clearly felt as one reads this passage. Rivalry increases since both of the wives are able to bear children, heir-sons in particular. If one of the wives does not have an heir-son, there wouldn't be much rivalry except for attraction from and attention by their husband. But because both of them now have heir-sons, there is a competition as to which son the father would favour to make the firstborn (prime heir).

V.15d: *But the firstborn is the son of the hated wife*. The central character or motif of the text, the firstborn, is dramatically introduced here. The text assumed its readers, including the polygamous family in question, to have understood the significance and tradition of the firstborn. Rivalry further increases and becomes more complicated if the firstborn [*rkb*] who would inherit the prime estate

<sup>33</sup> In Sudan, stories were told of some women committing suicide because of childlessness.

and succeed the father as the head of the *ba' t'v* (see below), is none other than the son of the hated wife.

V.16a: *When he divides up his estate and gives as inheritance to his sons.* Rivalry intensifies – who will be what and who will get how much from the family land/inheritance. This is a scenario of division of the family land among the brothers while their father is still alive. In fact it is their father who divides it and gives it to his sons. As discussed in Chapter Three, in other cases, the family land would be kept undivided as a joint holding/property of all the brothers.

V.16b: *He is not allowed to make the son of the beloved wife the firstborn above the son of the hated wife who is the actual firstborn.* Rivalry reaches its climax. There had been cases whereby a father would make his younger son the firstborn displacing his actual firstborn. The father in question in this text could do the same. But that is not to be the case. From now on, this instruction would “legally” prohibit the Israelite fathers from exercising this power. He just has to obey the tradition of primogeniture.

V.17a: *Instead, he must recognise the actual firstborn, the son of the hated wife.* The negative prohibition in v.16b, that is, the prohibition of a father from making a non-firstborn the firstborn, is reaffirmed positively by the command to recognise the actual firstborn.

V.17b: *And give him two-thirds of all he possesses.* The recognition of the actual firstborn must be proven and supported by practical steps of making him the prime heir of the family [*ba' t'v*] by giving him a two-thirds portion of the entire estate.

V.17c-d: *For he is the first fruit of his (father's) seed, so the office of primogeniture belongs to him.* Being the first fruit of his father is given as the reason for making the firstborn the successor of his father. This has religious, biological, and sociological significance (we will return to this later in the present chapter and in Chapter Five).

#### 4.2.4.2 Progression towards primogeniture

The diagram below illustrates how Deuteronomy 21:15-17 progresses towards the prerogatives of the firstborn until it reaches a climatic affirmation of the “law” of primogeniture.

Ref.	Sons	Son	Firstborn	Inheritance	Recognize	Give	Two-thirds	First fruit	Primogeniture
15c	~yḡb								
15d		!b	rkbh						
16a	~yḡb			Hl xḡ					
16b		!b	rkb <sup>34</sup>						
16b		!b	rkbh						
17a		!b	rkbh		ryky				
17b			rkbh [wl ]			!tn	~yḡv yḡ		
17c			rkbh [awh]					wḡa tyvar	
17d			rkbh [wl ]						hrkbh

#### 4.2.5 Narrational texture and pattern of Deut 21:15-17

Narrational texture usually reveals some kind of pattern that moves the discourse programmatically forward (Robbins 1996b:15). Although the text falls under the so-called legal materials of Deuteronomy (12-26), it is written, not in the form of typical legal formula of the second person address, but in the form of the casuistic law pattern of the impersonal third person address. We also see at least one narrative marker, *waiqtul* [l j qyḡ] ‘*waw* consecutive imperfect’ in the text – *wdl yw* ‘and they were born’. Again, there is neither prophetic oracle formula “thus says the Lord” [hwh y rḡa hk], nor a poetic, proverbial, or credo style in the text. The text is thus a programmatically narrated instruction or a casuistic/case law, “if ... then...” formula in the form of narrative. It forms a part of the long speech attributed to Moses (Deut 1:1). For this reason, Sailhamer (1992) suggests that the entire Pentateuch include both narratives and legal materials as narratives. The giver of the instruction or narrator of this primogeniture tradition is Moses. In addition to Moses, there is no other speaker in the text.

#### 4.2.6 Opening-Middle-Closing texture and pattern of Deut 21:15-17

This texture and pattern resides in the nature of the beginning, body, and conclusion of the discourse in which repetition, progression, and narration regularly work together to create the

<sup>34</sup> This verbal form refers to a father making his younger son the firstborn [rkb<sup>l</sup>], which is prohibited [l ky al] in the Torah.

opening, middle, and closing of a unit of text (Robbins 1996b:19). The following structure (cf. Christensen 2002:477) demonstrates the opening-middle-closing texture pattern of Deuteronomy 21:15-17:

A	A man has sons of two wives, one loved and one hated	21:15
B	When he divides his estate and gives as inheritance to his sons	21:16a
X	He is not allowed to make a younger son the firstborn	21:16b
B'	The actual firstborn is to receive a double portion	21:17a-c
A'	To the firstborn belongs the right of the firstborn	21:17d

The legal situation is presented in the opening texture pattern. A man has two wives and both the wives have borne him sons (v 15), the right of the firstborn belongs to the actual firstborn of the father (v 17c-d). The opening texture pattern also reports how the situation is complicated by the man loving one of his wives while he hates the other. The middle texture pattern expands the legal situation by spelling out what the law entails. When a man divides his estate and gives it as an inheritance to his sons (v 16a), he must give a double portion to the firstborn (v 17b). This middle texture pattern is reinforced by verse 16b: the man is not allowed to make the younger son, the son of his beloved wife, the firstborn by bypassing the actual firstborn, even if the latter is the son of the hated wife. Instead he must recognise the actual firstborn, the son of the hated wife.

The phrase  $\text{lkwy al}$  “functions as a rhythmic bridge connecting the two halves of verse 16” (Christensen 2002:479). The first command in the middle texture is a strong negative: “he is not allowed to make the son of the beloved wife the firstborn ahead of the son of the hated wife who is the actual firstborn” (16b) followed by an equally strong positive command beginning with  $\text{yk}$ : “Instead, he must recognize the actual firstborn, the son of the hated wife, and give him two-thirds of all he possesses” (v 17a-b; cf. McConville 2002:331). The closing texture pattern (v 17c-d) is a climatic reaffirmation, for/because  $[\text{yK}]$  is the first fruit of his father’s procreative seed, the right of the firstborn belongs to the actual firstborn.

#### 4.2.7 Argumentative texture and pattern of Deut 21:15-17

Rhetorical theory of both ancient and modern affirms that stories as well as speeches use argumentative devices to persuade the reader to think and act in one way rather than another (Robbins 1996b:21). Argument is an inner reasoning of the discourse that progresses logically (step by step) and/or qualitatively (the emergence of attribute of speech or action in relation to one or more characters in the narrative, which the reader had no reason to expect on the basis of a previous

assertion). Ancient rhetorical argument developed under seven argumentative topics – thesis, rationales, contrary with rationale, restatement of thesis with rationale, analogy, example and testimony of antiquity, and conclusion.<sup>35</sup> From this seven-part argument, we can see that “a thesis and a rationale together make two-thirds of a logical syllogism: the first sentence of the rationale presents the minor premise of the syllogism and the thesis presents the conclusion. When one premise is present in the discourse, a reader or hearer is able to supply the missing premise” (Robbins 1996b:23). Deuteronomy 21:15-17 is an argumentative text *par excellence*. The text is carefully developed by way of the seven part argument and several logical syllogisms.

#### 4.2.7.1 A seven-part argument

The right of the firstborn son belongs to the actual firstborn son (*thesis*) because he is the first fruit of his father’s vigour (*rationale*). For this reason, a father cannot displace the firstborn son and make the younger son the firstborn, even if that son is the son of his beloved wife (*contrary to rationale*). A father must recognise the actual firstborn son, even if he is the son of the hated wife, and give him two-thirds of all he possesses (*restatement of thesis with rationales*). Observing the firstborn law/tradition will result in blessing while disobedience will result in curse (assumed *analogy*, as it is a part of the commandment which reserves blessing for obedience and curse for disobedience as spelled out in Deuteronomy 28). There will be strife if primogeniture law is not observed, as can be seen from the lives of the patriarchs who favoured the sons of their beloved

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<sup>35</sup> The following arrangement of the *Rhetorica ad Herennium* (quoted in Robins 1996b:21-22) will help us understand the argumentative texture of Deuteronomy 21:15-17 better:

The wise man will, on the republic’s behalf, shun no peril (**thesis**), because it may often happen that if a man has been loath to perish for his country it will be necessary for him to perish with her. Further, since it is from our country that we receive all our advantages, no disadvantage incurred on her behalf is to be regarded as severe (**rationales**). I say, then, that they who flee from the peril to be undergone on behalf of the republic act foolishly, for they cannot avoid the disadvantages, and are found guilty of ingratitude towards the state (**contrary to rationale**). But on the other hand they who, with peril to themselves, confront the perils of the fatherland, are to be considered wise, since they render to their country the homage due her, and prefer to die for many of their fellow citizens instead of with them. For it is extremely unjust to give back to nature, when she compels, the life you have received from nature, and not to give to your country, when she calls for it, the life you have preserved thanks to your country; and when you can die for fatherland with the greatest manliness and honour, to prefer to live in disgrace and cowardice; and when you are willing to face danger for friends and parents and your other kin, to refuse to run the risk for the republic, which embraces all these and that most holy name of fatherland as well (**restatement of thesis with rationales**). He who in a voyage prefers his own to his vessel’s security, deserves contempt. No less blameworthy is he who in a crisis of the republic consults his own in preference to the common safety. For from the wreck of a ship many of those on board escape unharmed, but from the wreck of the fatherland no one can swim to safety (**analogy**). It is that, in my opinion, Decius well understood, who is said to have devoted himself to death, and, in order to save his legions, to have plunged into the midst of the enemy. He gave up his life, but did not throw it away; for at the cost of a very cheap good he redeemed a sure good, of a small good the greatest good. He gave his life, and received his country in exchange. He lost his life, and gained glory, which, transmitted with highest praise, shines more and more every day as time goes on (**example and testimony of antiquity**). But if reason has shown and illustration confirmed that it is fitting to confront danger in defence of the republic, they are to be esteemed wise who do not shrink from any peril when the security of the fatherland is at stake (**conclusion**).

wives (assumed *example and testimony of antiquity* – strives between descendents of Ishmael and Isaac, Esau and Jacob, Reubenites and Josephites, etc). Therefore, the right of the firstborn son must be respected; and this right belongs to the actual firstborn son (*conclusion*).

#### 4.2.7.2 Logical syllogisms

The following example of syllogism can be deduced from the thesis and the first sentence in the rationale of *Rhetorica ad Herennium*:

**[Unstated major premise:** No one wants to perish along with his country.]

**Minor premise** [rationale]: If a man has been loath to perish for his country, it will be necessary for him to perish with her.

**Conclusion** [thesis]: (Therefore,) the wise man will, on the republic's behalf, shun no peril.

From the above illustration, a similar pattern of syllogism could be inferred from Deuteronomy 21:15-17 as follows:

#### *Concerning primogeniture*

**[Unstated major premise:** The prerogative of the firstborn son or primogeniture was universally accepted and practised tradition in ancient Israel. The reason for this was that, in addition to the firstborn son being the first fruit of his father's vigour, being the first to reach adulthood, he was next to the father in shouldering *pater familias* responsibilities. In the advent of the father's early death or incapacitation, he would shoulder all the responsibilities of the *pater familias*. ]

**Minor premise:** But some Israelite fathers had violated this tradition; firstborn sons were often displaced in favour of younger sons, both in monogamous and polygamous families.

**Conclusion:** Therefore, the Deuteronomic "law" stipulates that a father shall no longer have any right whatsoever to displace the actual firstborn son in favour of the younger son.

#### *Concerning the presence of loved and hated wives in a polygamous marriage*

**[Unstated major premise:** Some polygamous marriages in ancient Israel were not based on love and affection, but were marriages of conveniences. Thus a man could marry a woman he did not love and continued to keep her even if he had come to reach a point of hating her.]

**Minor premise:** It is impossible to treat all the wives equally in a polygamous marriage.

**Conclusion:** Therefore, it is natural that one wife or some wives would be favoured above others; which usually caused rivalry between the wives.

#### *Concerning primogeniture*

**[Unstated major premise:** The family of ancient Israel was a patriarchal and patrilineal.]

**Minor premise:** Daughters/women were excluded from inheritance and succession; the firstborn son succeeded his father as the head of the *pater familias* and so inherited the prime family estate and continued the family name.

**Conclusion:** Primogeniture, therefore, served as a cornerstone for the continual survival of the patriarchal family which was necessary of the continual holding of the inalienable family land/inheritance.

#### 4.2.8 Sensory-aesthetic texture and pattern of Deut 21:15-17

The sensory-aesthetic texture of a text is basically the study of human body discourse. According to Robbins (1996b:29-30), this texture “resides prominently in the range of senses the text evokes or embodies (thought, emotion, sight, sound, touch, smell) and the manner in which the text evokes or embodies them (reason, intuition, imagination, humor, etc).” Malina (1993:73-77) posits three mutually interpenetrating yet distinguishable zones from which human beings interact with their environments. He then concludes that the use of this approach creates a taxonomy of three body zones and their related phenomena in the thought-world of Mediterranean culture, namely zone of emotion-fused thought, zone of self-expressive speech, and zone of purposeful action (cf. Robbins 1996b:30-31).<sup>36</sup>

*Zone of emotion-fused thought:* As noted above, having two wives causes emotional strains. It affects all the members of a patriarchal family – the father/husband, wives, and children. A polygamous husband’s different emotions towards his two wives are reported in no uncertain terms – he loves one and hates the other. This eventually affects his relationship with his sons – favouring his sons of his favourite wife and disfavouring those of the hated wife. This could even lead up to the point of breaking the tradition of the right of the firstborn – making the son of the favourite wife the firstborn in place of the son of the hated wife, who is the actual firstborn son. By so doing, the

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<sup>36</sup> *Zone of emotion-fused thought:* eye, heart, eyelids, pupils, and the activities of these organs – to see, know, understand, think, remember, choose, feel, consider, look at. The following representative nouns and adjectives pertain to this zone as well: thought, intelligence, mind, wisdom, folly, intention, plan, will, affection, love, hate, sight, regard, blindness, look; intelligent, loving, wise, foolish, hateful, joyous, sad, and the like. In our culture, this zone would cover the areas we refer to as intellect, will, judgment, conscience, personality thrust, core personality, affection, and so forth. *Zone of self-expressive speech:* mouth, ears, tongue, lips, throat, teeth, jaws, and the activities of these organs – to speak, hear, say, call, cry, question, sing, recount, tell, instruct, praise, listen to, blame, curse, swear, disobey, turn a deaf ear to. The following nouns and adjectives pertain to this zone as well: speech, voice, call, cry, clamour, song, sound, hearing; eloquent, dumb, talkative, silent, attentive, distracted, and the like. In our culture, this zone would cover the area we refer to as self-revelation through speech, communication with others, the human as listener who dialogues with others in a form of mutual self-unveiling, and so on. *Zone of purposeful action:* hands, feet, arms, fingers, legs, and the activities of these organs – to do, act, accomplish, execute, intervene, touch, come, go, march, walk, stand, sit, along with specific activities such as to steal, kidnap, commit adultery, build, and the like. The following representative nouns and adjectives pertain to this zone: action, gesture, work, activity, behaviour, step, walking, way, course, and any specific activity; active, capable, quick, slow, and so forth. In our culture, this zone would cover the area of outward human behaviour, all external activity, human actions upon the world of persons and things (Malina 1993:73-77).

firstborn son is shamed. The law stipulates that a father must recognise [rʏky] the firstborn son and give him a double portion of all what he has (which is found) [aCMy-rʏvā]. The rhetoric artistically links recognising the firstborn (eye and heart) and giving him two-thirds of all which is found in his father's house (eye). As much as the firstborn must be recognised, nothing in his father's estate should be hidden from him.

*Zone of self-expressive speech:* Like Jacob's declaration to displace Reuben in favour of Joseph as the firstborn who would receive a double portion inheritance (Gen 49), a man in Deuteronomy 21:15-17 declares the son of his beloved wife as the firstborn displacing the son of his hated wife, who is the actual firstborn. In ancient times, a verbal declaration would normally be sufficient, although sometimes written or court declarations were made, as in the case of the Mesopotamian inheritance laws discussed above. By the words of Moses [~yrbd], the law giver (cf. Deut 1:1), the most authoritative words for the Israelites, a father's words of displacing the firstborn son is made null and void.

*Zone of purposeful action:* The bodies of the two wives were represented in a positive light because they were able to conceive and give birth [wdl y] to sons, which was every wife's dream. Women who were unable to produce children, especially sons, were looked down on, ridiculed, and in some cases divorced. However, the central focus of Deuteronomy 21:15-17 is the significance of the body of the firstborn son. The body of the firstborn son is significant because it is the first of his father's sexual vigour or procreative strength/seed. This also implies that the firstborn son himself would be full of sexual strength/procreative seed to produce his own firstborn son and other sons to continue the family name.

#### **4.2.9 Summary observations on the inner texture of Deut 21:15-17**

Above we have studied the inner texture of Deuteronomy 21:15-17 by analysing the text and translations, including meanings and concepts of key words and phrases as well as the repetitive, progressives, opening-middle-closing, narrational, argumentative, and sensory-aesthetic textures and patterns of the text. The significance of the firstborn and the preservation of the office of primogeniture is the central motif that is overlapping in all these textures, as the following diagram vividly illustrates.

## Firstborn [rkb] and firstborn birthright [hrkb] as the central motif of Deut 21:15-17

Texture	Summary analysis
<i>Repetitive</i>	rkb with hrkb is the most frequently repeated word in the text - repeated eight times in this short text, including a pronoun [אִתּוֹ] and two propositional suffices [וְ] that refer to the firstborn. This warrants Rkb, hrkb as the central motif of the text.
<i>Progressive</i>	The text progresses towards primogeniture [hrkb], with rivalries between wives and their sons, fathers' past violations of primogeniture tradition, and the significance of the biological firstborn, as stepping stones. The maximum repeated word rkb (firstborn) is progressed gradually and dramatically from a son of the hated wife towards the firstborn, in danger of losing his firstbornship, "legal" protection of his firstbornship, biological and religious significance of being the first fruit of his father, and until it reaches a climatic reaffirmation and preservation of the firstborn birthright [hrkb] or primogeniture.
<i>Opening-middle-closing</i>	Verse 15 opens the central motif of the text [rkb, hrkb] by dramatically introducing the firstborn of a polygamous patriarchal family as none other than the son of the hated wife. There are two commands, one negative and one positive, in the middle, verses 16 and 17a-b, concerning the firstborn. Negatively, a father is prohibited from making any of his younger sons the firstborn by displacing the actual firstborn (eldest son). Positively, a father is commanded to recognise his actual firstborn son and make him his heir and successor by giving him two-thirds of all his estate. Verse 17c-d closes the text by providing the reason for promulgating the firstborn birth right [hrkb], that is, making the biological firstborn son to be the heir and successor of his father – יָק (for/because) he is the first fruit of his father's procreative strength/seed.
<i>Narrational</i>	This text falls under the so-called legal materials of Deuteronomy (12-26). However, it is peculiarly written, not in typical first person address form of "legal" corpora, but according to the pattern of the casuistic impersonal third person law, but written in a narrative form, with the firstborn and the firstborn birthright as the central motif of the narrative.
<i>Argumentative</i>	As already noted above, the central argument of this text is presenting a case for primogeniture (see the seven-part argument and syllogisms above).
<i>Sensory-aesthetic</i>	A younger son must not be put "above the face" (emotion/shame) of the actual firstborn; the actual firstborn must be <i>recognised</i> (eye and heart/honour) and be given two-thirds of all which is <i>found</i> (eye) in his father's house. Also, by the <i>words</i> of Moses [-yrbd] (mouth), the law giver (Deut 1:1, etc), the most authoritative words for the Israelites, a father's <i>words</i> of displacing the firstborn son is made null and void. In the final analysis, the <i>body</i> of the firstborn is significant because he is the <i>first fruit</i> of his father's procreative <i>semen/seed</i> .

Despite new and interesting findings that emerge from a close reading of the text or the inner textual analysis, dwelling on the inner texture alone will not give an adequate understanding of the motifs and themes of the text. Therefore, it is of paramount importance to study parallel texts. This is particularly true of a text like ours, Deuteronomy 21:15-17. The original audience of the text was assumed to understand the tradition of primogeniture. But for the modern readers of the text, this short text does not give adequate background information concerning primogeniture. Thus we need to go to other texts as well. This takes us to the intertexture analysis of Deuteronomy 21:15-17.

### 4.3 INTERTEXTURE ANALYSIS OF DEUTERONOMY 21:15-17

#### 4.3.1 Introductory observations

Intertexture analysis is “entering the interactive world of a text,” that is, “a text’s representation of, reference to, and use of phenomena in the “world” outside the text being interpreted.” It is the analysis of the language in the text’s interaction with “outside” material and physical “objects,” historical events, texts, customs, values, roles, institutions, and systems (Robbins 1996b:40). Indeed Robbins’ (1996b) other three textures – social and cultural, ideological, and sacred textures – could well come under the intertexture analysis, namely, social and cultural intertexture, ideological intertexture, and sacred intertexture.

However, for our study purpose, we will continue to follow Robbins’ five texture analysis in this research. Robbins (1996b:40-70) proposes four ways of studying the intertexture of a text, namely, oral-scribal, cultural, social, and historical intertextures. The primogeniture instruction in the Deuteronomic Code is repeatedly violated in the narrative instructions. This reversal has a strong intertexture ideological-theological link. Therefore, we will not analyse this link here but return to it later in the discussion of “ideological texture.”

#### 4.3.2 Oral-scribal intertexture of Deut 21:15-17

Oral-scribal intertexture analyses a text’s use of language from other texts either explicitly or without reference. It operates in five basic ways of transmission of speech or narrative, namely, *recitation*, *recontextualisation*, *reconfiguration*, *narrative amplification*, and *thematic elaboration* (Robbins 1996b:40-58).

##### 4.3.2.1 Recitation and recontextualisation

Recitation<sup>37</sup> could be either oral or written tradition. A word, phrase or text may become recitation when there is replication of exact words of another written text, sometimes in the form of *chreia* - “a brief statement or action aptly attributed to a specific person or something analogous to a person”

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<sup>37</sup> Somewhere in the line, a few decades earlier, Von Rad (1962:121, etc) had advanced a theory of the Old Testament theological discourse as a “retelling” of traditions and stories. Somewhat in a slightly different trend, Van Seters (1983a) suggests Old Testament historiography as an “imitation” of the Ancient Near East historiography.

(Robbins 1996b:41); replication of exact words with one or more differences; omission of words in such a manner that the word-string has the force of a proverb, maxim, or authoritative judgment; recitation of a saying using words different from the authoritative source; recitation that uses some of the narrative words in the biblical text plus a saying from the text; recitation of a narrative in substantially one's own words; and/or recitation that summarises a span of text that includes various episodes.

Recontextualisation is presenting wording by way of attributed speech or narration from other texts without explicit statement or implication that the words “stand written” anywhere else (Robbins 1996b:48). Recitation and recontextualisation are thus closely related in terms of genre. Therefore, we will analyse these two intertextures together. Recitation and recontextualisation of a text without quoting or referring to it will amount to plagiarism in the modern understanding of intellectual property rights. But it should be noted that such a practice was acceptable and universal among ancient writers.

As noted above, Deuteronomy 21:15-17 falls under the Deuteronomistic Code. Therefore, before we engage in Deuteronomy 21:15-17's recitation and recontextualisation of other texts and vice versa, it is important to first analyse Deuteronomistic Code's recitation and recontextualisation of other codes and texts.

### *Deuteronomistic Code's recitation and recontextualisation of the Covenant Code*

The clause, ... #rab twX[I !wrmvt rva ~yj pvmh ~yqxh hla - “These are the decrees and laws you must be careful to follow in the land ...” (Deut 21:1; NIV) is the preamble of the Deuteronomistic Code, which is therefore the preamble of the primogeniture instruction of Deuteronomy 21:15-17 as well. There is a uniform preamble pattern for each of the discourses or units in the book of Deuteronomy:

... ~yrbdh hla (“These are the words that Moses spoke to all Israel...”) (1:1-4:43),

... hrwth tazw (“This is the Torah that Moses put before the Israelites...”) (4:44-11:32),

... ~yj pvmh ~yqxh hla (“These are the decrees and laws you must be careful to follow in the land...”) (12:1-26:19),

... ~[h-ta larXy ymqzw hvvm wcyw (“Then Moses and the elders of Israel commanded the people ...”) (27:1-28:68),

... larXy ynb-ta trkl hXm-ta hwhw hwc-rva tyrbh yrbd hla (“These are the words of the covenant that Yahweh commanded Moses to make with the children of Israel...”) (28:69-32:52), and

... l arXy ynb-ta -yhl ah vya hXm %rb rva hkrbh tazw (“This is the blessing which Moses the man of God blessed the children of Israel...” (33:1-34:12); (Banstra 1999:197-198).

These preamble phrases appear to be a recitation and recontextualisation of the preamble formula of the Covenant Code (Exod 19:6 cf. 35:1) which in turn recites the preamble formula of the Ancient Near East treaties.

Nearly half of the materials in the Covenant Code (Exod 20:19-23:33) have their parallels in the Deuteronomic Code. This presents a strong case for the latter’s recitation of the former. For example, the Decalogue of Deuteronomy 5 is a replica of the Decalogue of Exodus 20.<sup>38</sup> Von Rad (1966:12) observing that Deuteronomy 4-30 shows a remarkable arrangement, argues: “A predominantly hortatory speech to the people (‘exhortation’) passes in Deuteronomy 12 into a recital of the ‘laws.’ This part then ends in Deuteronomy 26:16-19 with the formulation of a covenant. Then there follows, again in elaborate detail, the proclamation of blessing and curse.”

Deuteronomic Code as a recitation and recontextualisation of the Covenant Code is also demonstrated by the title of the book itself. The traditional Hebrew title for Deuteronomy is -yrbdh hla (“these are the words”), taken from the first two words of the book (Deut 1:1), following the ancient practice of naming books after their key opening words or phrase.<sup>39</sup> The English name for the book, Deuteronomy (from Latin *deuteronomium*) is taken from the LXX’s rendering of Deuteronomy 17:18 which reads tazh hrwth hnmv (“a copy of this law”). The future king of Israel is commanded “to write for himself on a scroll *a copy of this law...*” (Deut 17:18; NIV, researcher’s emphasis). The Hebrew word hnmv can mean “double/two/second/repetition” or “copy” depending on its context. The LXX chooses the former and translates the phrase tazh hrwth hnmv as to. deuteronomion (“the repeated or second law”). The rabbinic literature too frequently use this

<sup>38</sup> Other examples of parallels include: Exod 21:1-11=Deut 15:12-18; Exod 21:12-14=Deut 19:1-13; Exod 21:16=Deut 24:7; Exod 22:16f=Deut 22:28, 29; Exod 22:21-24=Deut 24:17-22; Exod 22 :25=Deut 23 :19-20 ; Exod 22 :26f=Deut 24 :10-13 ; Exod 22 :29f=Deut 15 :19-23 ; Exod 22 :31=Deut 14 :3-21 ; Exod 23 :1=Deut 19 :16-21 ; Exod 23 :2f, 6-8=Deut 16 :18-20 ; Exod 23 :4f=Deut 22 :1-4 ; Exod 23 :9=Deut 24 :17f ; Exod 23 :10f=Deut 15 :1-11 ; Exod 23 :12=Deut 5 :13-15 ; Exod 23 :13=Deut 16 :13 ; Exod 23:14-17=Deut 16:1-17 ; Exod 23:19a=Deut 26:2-10; Exod 23:19b=Deut 14:21b (cf. Von Rad 1966:13; Fohrer 1970:172).

<sup>39</sup> Weinfeld (1991:2) rightly notes that “the system of naming a literary creation after its incipit is very ancient: compare the Babylonian creation epic named after its opening: *enūma eliš* ‘when above’, and the so-called “Righteous Sufferer,” the ancient title of which was *ludlul bēl nemēqi* ‘I will praise the lord of wisdom’, after the opening words of the work.”

concept by calling Deuteronomy *Mishneh Torah* (Sipre, §160), “the Repetition of the Torah”<sup>40</sup> (cf. Wenfeld 1991:1; Tigay 1996:xi).

Despite the title Deuteronomy being sprung from the LXX’s misreading of Deuteronomy 17:18, this name would nevertheless appear to be the most appropriate and “apt designation for the book, which recapitulates the teaching of Genesis through Numbers” (Tigay 1996:xi; cf. Levinson 1998:156-157; Sailhamer 1992:423).<sup>41</sup> Repetition is one of the key techniques of rhetorical persuasions (Robbins 1996b:8-9). Here in the Deuteronomic Code, earlier instructions are not only repeated, but are also recontextualised by way of expansion and exposition: “These are the words which Moses spoke to all Israel” (Deut 1:1); “Moses began to *expound* this instruction” (1:5).

In the Covenant and Holiness Codes, Yahweh is presented as the speaker and Moses the first recipient of Yahweh’s commandments. But the Deuteronomic Code is reported as a part of Moses’ long speeches. This could be a carefully rhetorical emphasis to indicate Deuteronomy as not just a recitation of the Covenant Code and Holiness Code, but more importantly as a recontextualisation of these largely religious codes to become a civil legal code, “a distinctly secular foundation” to suit the monarchical court (Weinfeld 1972:188). This is possible considering the largely civil, secular and humanitarian natures of many of the clauses of the Deuteronomic Code (Weinfeld 1972: 187ff.). But Von Rad (1963:13) considers the address in Deuteronomy by Moses as no less divine. For him, it is the “divine charge given to the lay community as second hand.” Calling the “laws” of Deuteronomy as “Deuteronomic preaching” from the standpoint of its rhetoric and homiletics, Von Rad (1963:15) differentiates between the Covenant Code and Deuteronomy as follows:

[T]he most elementary difference between the Book of the Covenant and Deuteronomy – a difference that is particularly striking just because the two books do contain so much common material – lies in the fact that Deuteronomy is not a divine law in codified form, but preaching about the commandment.

Weinfeld (1991:1-84) asserts that Deuteronomy constitutes a second or additional covenant besides the Sinaitic one (28:29) based on the fact that the people received “laws” that were delivered to

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<sup>40</sup> Philo (see Weinfeld 1991: n.1) names Deuteronomy *epinomis* (appendix/addition). Thematic appellations existed side by side with the nomenclature taken from the opening words of each book of the first four books of the Pentateuch as well: Genesis [tyvarb] (“In the Beginning” = creation), Exodus [twmv] (“The Names” = exit from Egypt), Leviticus [arqyw] (“He Called” = Priestly matters/“laws”), and Numbers [rbdmb] (“In the Desert” = the census of the Israelites) (cf. Weinfeld 1991:2).

<sup>41</sup> Although the term Torah is Deuteronomy’s most explicit self description (1:5; 4:8, 44; 29:20; 30:10), these references, however, seem to be generic designations rather than formal titles. Tigay (1996:xi) suggests that the closest to a title for the book of Deuteronomy is *hvm trwt* (the instruction/teaching of Moses) (Jos 8:32; 2 Ki 23:25; Mal 3:22 [ET 4:4]) We shall return to this later.

Moses at Sinai later at the plains of Moab only. He thus contends that Deuteronomy is dependent on the previous traditions of the Pentateuch but was revised according to the principles of the Hezekianic-Josianic reforms. For example, for Weinfeld, the instructions on tithes (12:17-19; 14:22-29; 26:12-15), the year of the release of debts (15:1-11), the rule of the release of slaves (15:12-19), the firstborn animal (15:19-23), and the three festivals (16:1-17) are all ancient traditions (cf. Exod 21:1-11, 22:28-29; 23:10-11, 14-19; 34:19-26). They appear in Deuteronomy in a new form, adjusted to the principles of centralisation of cult as well as the social-human tendency that is characteristic of Deuteronomy.

In recent years, the traditional assumption of the Covenant Code as preceding Deuteronomy has, however, been challenged. Some scholars, for example, Kaufmann (1960:205) and Merendino (1969:401-402), challenge the very idea of literary relationship between Deuteronomy and the Covenant Code in favour of different independent sources' theory. Only about half of the legal materials contained in the Covenant Code have Deuteronomistic Code parallels. The other half has no parallel in Deuteronomy. There are also considerable amount of materials specific to Deuteronomy. Based on these, some have concluded that both the Covenant Code and Deuteronomistic Code draw on a common legal tradition in areas of common concern (cf. Boecker 1976:180). For Boecker (1976:135), the Book of the Covenant, which contains legal prescriptions as well as parenthetic texts, is the oldest collection of laws in the Old Testament. Deuteronomy and the Holiness Code are later collections. However, some of the materials of the Covenant Code are omitted in the Deuteronomistic Code. There are also materials peculiar to Deuteronomistic Code only. For these reasons, Boecker (1976:185-186) concludes that the Deuteronomistic Code is on its own to serve its own contexts.

All its special characteristics are already present in the Book of Covenant, but what appears there in rudimentary form is fully mature in Deuteronomistic law. Here, law is placed in the context of address and exhortation; it has been finally shot through with theology.

Chamberlain (1977:129-159) and Van Seters (1983:167-182, 1985:355-361, 1988:111-130, 1994) also accept dependency, but reverse the sequence and argue that the Covenant Code in whole or part depends upon Deuteronomy. Others propose a "two-source" theory for the composition of Deuteronomy by arguing that, in addition to the Covenant Code, an ancient "Privilege Law" source exists, which is identified with Exodus 34:10-26 (cf. Lohfink 1976:230; 1984:297-328; Braulik 1991:116). Recent redactional hypothesis of the Covenant Code suggests a minimum of four-stage process: (1) the compilation of the Covenant Code either from originally independent sub-collections of laws of various origins (family, local courts, cult) or from separate continuous strata; (2) pre-Deuteronomistic revision of the Covenant Code by way of reformulation, supplementation,

and redrafting; (3) a Deuteronomistic redaction of the Covenant Code that brings it into conformity with the theology and social concerns of Deuteronomy and that is responsible for embedding it into the larger Sinai narrative (Exodus 19-24); and (4) a final Priestly redaction (cf. Levinson 1998:11-13). Although these hypotheses of no dependency, the precedence of Deuteronomy over the Covenant Code, a “two source” theory, and several stages of redaction theories are interesting, they are still less convincing than the traditional interpretation of Deuteronomy as a repetition, expansion, and exposition of the Covenant Code as well as a prologue and basis for the Deuteronomistic History/Theology of Joshua – 2 Kings.

***Covenant Code’s recitation and recontextualisation of the Ancient Near East law collections***

It is widely attested in scholarly circles that “ancient Israel inherits a broad selection of literary genres and *topoi* from the Near East – the legal collection, narratives, historiographies, cultic instructions, genealogies, proverbial wisdom, theodicies, poetry” (Levinson 1998:17). In the same vein, Westbrook (1994:21) asserts that Deuteronomic Code recites and recontextualises the Covenant Code which in turn recites and recontextualises the Ancient Near East law collections; (see also Paul 1970:43-106). Half of the materials in the Covenant Code have parallels in Deuteronomy and more than half of the Covenant Code’s provisions have in turn some parallels in one or more of the cuneiform codes, whether in the form of addressing the same problem or applying a distinct rule; a similar rule, or an identical rule.<sup>42</sup> Because of these striking parallels, scholars have fully recognised that the Old Testament legal instructions were part of a common legal culture of the Ancient Near East (cf., Otto 1988b: 366-367, Westbrook 1994:17, Selman 2003:505-508, and works cited in these studies). However, scholars who espouse a historical development of the Covenant Code differ as to its details and reflections in the text. Recent scholarly hypotheses on the historical developmental stages of the Covenant Code (Exod 20:22-23:19) include the following statements:

- Covenant Code forms a separate entity that has been inserted into the surrounding narratives<sup>43</sup>;
- Covenant Code casuistic laws were derived from the cuneiform law code tradition while apodictic laws are uniquely Israelite;<sup>44</sup>

<sup>42</sup> But see Selman (2003:506) who contends that no laws have been found so far that are identical in form in both Israel and Mesopotamia.

<sup>43</sup> This theory has long been recognised by many scholars (cf. Westbrook 1994:15-36).

<sup>44</sup> The division of the Old Testament laws into two types on the basis of form – casuistic and apodictic – was first introduced by Alt (1959 [1934]: 278-332; cf. Westbrook 1994b:16). For Alt, the casuistic laws, characterised by an if-

- Covenant Code casuistic and apodictic forms were originated and developed within the internal history of Israelite law;<sup>45</sup>
- Covenant Code laws were amended when more sophisticated test developed;<sup>46</sup> and
- Covenant Code models a pristine casuistic code, the provision of which underwent expansion at three stages by different redactors – secular, religious, and Deuteronomist.<sup>47</sup>

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clause ('if men fight ...') are believed to have been derived from the cuneiform law code tradition via putative Canaanite codes, whereas the apodictic laws (cf. Boecker 1976:191-207 and literature cited there), characterised by concise commands ('Whosoever strikes a man and he dies shall be put to death'), are unique to ancient Israel. The two types of laws differed not only as to source but as to character, casuistic laws being dry, practical, and secular; apodictic laws being emotional imperatives dealing with religious and moral issues. More important still is their difference in substance. For example, the casuistic law of homicide took into account the culprit's intention; the apodictic law imposed talionic punishment. As Westbrook (1994b:16) rightly notes, although Alt's claim of Israelite uniqueness for apodictic law has not been universally accepted, many scholars (for example, *ANET* 2<sup>nd</sup> edn, p.183 n. 24; Mendenhall 1954:30; Williams 1964:484-489) nevertheless follow his basic distinction, together with the notion that the two forms are somehow different in source and content.

<sup>45</sup> The main proponent of this theory is Otto (1988a; 1988b, see Westbrook 1994:16-17 for review of these works). Judging from its form that reflects the curt commands of the paterfamilias, apodictic laws arose from the jurisdiction of the paterfamilias within the family or clan where the patriarch (father) has power to punish individual members, if necessary with the death penalty. Based on laws that reflect a series of precedents as to when compensation is appropriate, casuistic laws, which are not concerned with individuals, on the other hand, arose from disputes between families within a tribe, with the local court that acted as an arbitrator as its jurisdiction. These local courts did not have coercive powers, since settlement of the dispute ultimately depended on the agreement of the two families. Except blood vengeance, where the parties took justice into their own hands, all judgments of casuistic offence were compensatory in nature. With the establishment of monarchy that resulted in society becoming more complex, patriarchal jurisdiction was taken over by the courts, which thereby developed a casuistic criminal law. Casuistic law, which formerly had dealt with disputes between families on an equal footing, now had to deal with vertical disputes between rich and poor, which it achieved by developing a social law to protect the latter. At the end of the process, therefore, there existed several independent bodies of law – casuistic civil law, casuistic criminal law, apodictic criminal law and casuistic social law – which came together under the jurisdiction of the local court. Their ultimate fusion is reflected in the Covenant Code, which interweaves these various sources.

<sup>46</sup> For example, Daube (1969 [1947]:74-101) asserts that the theft provisions of Exodus 21:37-22:3 comprises three rules which are not in their logical order: (a) the thief who slaughters and sells, (b) the right to kill a thief breaking in, and (c) the thief who has not yet slaughtered and sold. The logical order would have been (a) (c) (b). This suggests that (c) is a later amendment. The reason for the amendment was because of a development in the law of evidence. The original law contained a crude, objective test – theft was not proven until the stolen object had been used. Later, a more sophisticated test developed whereby the subjective intentions of the thief were considered. If it could be ascertained that he had the intention to misappropriate, then possession alone would be sufficient to establish theft (cf. Westbrook 1994:18). Jackson (1975:75-107) argues that various features of the law concerning a pregnant woman (Exod 21:22-25) are the incorporation of editors of reforms in the general law. The singular form "you shall give" [חַתָּו] in verse 23 was interpolated to restrict liability to a single individual. The awkward ending of verse 22, "and the court (judges) allows (gives) [~]לִי לְפָנֶיךָ לְחַתָּו" interpolated the husband's claim by assessors, and, most subtly of all, the talionic wounding provisions in verses 24-25 were added to change the context of the word חַתָּו (injury) and thus shift its meaning from the death of the fetus to the death of the mother, without changing the original wording (Westbrook 1994:18).

<sup>47</sup> Schwienhorst-Schönberger (1990:194-211, 234-238; cf. Westbrook 1994:18-19) is the sole proponent of this theory. Each stage reflects legal and social developments, but is achieved only by interpolation in the previous text, not by amendment. For example, in the deposit law of the Covenant Code (Exod 22:6-14), the pristine provision dealt only with injury or death to an ass, ox, or sheep entrusted or loaned (vv. 9, 10, 13). The first redactor added the question of theft of goods deposited and a divine verdict procedure that included the aforementioned animals (vv. 6-8), which in verse 11 he covered for both categories the unresolved case of the depositor's responsibility where he is not the thief. The second redactor replaced the divine verdict with the Yahweh oath (vv. 9-10), adding (*inter alia*) the generalising words "any animal" so as to change the meaning of verse 8 from divine verdict to oath by giving it a new context.

Westbrook (1994:36) contends that the above hypotheses on the historical development of the Covenant Code and other diachronic approaches to it are based on no empirical evidence, but upon identification of allusions in the text itself by the application to it of certain basic premises which are difficult to formulate. Recitations and reconstructions are more usually assumed than stated. For these reasons, the theories of the diachronic development of Old Testament legal materials are not shared to the same degree by all scholars.

Interpreters of the Covenant Code need to come to terms with the fact that it is part of a widespread literary-legal tradition and can only be understood in terms of that tradition. The starting point for interpretation must therefore be the presumption that the Covenant Code is a coherent text comprising clear and consistent laws, in the same manner as its cuneiform forbears. Apparent inconsistencies should be ascribed to the state of our ignorance concerning the social and cultural background to the laws, not necessarily to historical development and certainly not to an excess of either subtlety or incompetence on the part of their compiler<sup>48</sup> (Westbrook 1994:36).

What Westbrook is basically saying here is that the cuneiform laws have a long and static history as legal literary collections. They did not conform to social, political and historical changes. In the same way, since most of the Old Testament legal instructions are derived from the cuneiform legal literary collections, they are static and must be read as a coherent whole. Arguing for the internal coherence of the individual legal collections to their external coherence relative to one another, which Levinson (1994b:38) describes as Westbrook's assumption of a "meta-coherence" of all the legal collections relative to one another, Westbrook concludes that diachronic analysis, whether applied to the biblical or the cuneiform legal collections, is methodologically invalid and its assumptions illegitimate. The ostensible textural inconsistencies, redundancies or contradictions should not be diachronically resolved. They do not betray the work of later editors who revise or rework earlier materials and do not represent additions or interpolations. Such assumptions about the composition and editing of biblical and cuneiform law lack empirical evidence.

Westbrook's rejection of a diachronic approach which situates stages of innovative developments of the Covenant Code and his argument for a coherent whole of the Old Testament law, or a synchronic approach, has generated interesting debates and triggered elaborate responses (for arguments for the coherence of the entire Covenant Code, see also Westbrook 1988; Eissfeldt 1965:217; Noth 1962:173-175, 180; Childs 1974:454, 456-457; Malul 1990:140-143).

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<sup>48</sup> Westbrook originally presented his paper entitled, "What is the Covenant Code?" at a special session of the Annual Meeting of the Biblical Law Group of the Society of Biblical Literature on November 24, 1991, Kansas City, Missouri, as a keynote paper. It was published 1994 with reviews of and reflections on it by several scholars (see below) under the title *Theory and Method in Biblical and Cuneiform Law: Revision, Interpolation and Development*, edited by Bernard M Levinson.

Levinson (1994b:37-59) provides an interesting critique to Westbrook's hypothesis. He points out that Westbrook's synchronic approach doubly contradicts its own mandate by smuggling in classical literary criticism through the back door. In so doing, Westbrook redefines, transforms, or reconstructs the text in order to accommodate the theory and overlooking his own elaborate exegetical reconstruction. This makes Westbrook contradict himself when he claims that the 'empirical evidence' of cuneiform law requires compositional unity. Levinson contends that the compositional norms of cuneiform literature involve extensive redactional activity, which creates the logical expectation that Israelite literature, including the legal collections, should be consistent with such norms, and therefore involve revision and interpolation. *Revision* and *interpolation* are the two key words for Levinson's postulates. The diachronic position which Westbrook rejects indeed more conventionally applies to the larger literary unit, the complex of material comprising the Covenant Code as a whole (Exod 20:22-23:2). The larger unit combines third-person and second-person law, casuistic and apodictic law; the altar laws that precede the legal superscription of Exodus 21:1; parenthesis alongside more normative legal forms; religious law alongside civil and criminal law; etc.. The Covenant Code thus conventionally comprises Exodus 20:20-26 (redactional transition and altar law), 21:1-22:16 [~ytpvm], 22:17-23:19 [~yrbd], and 23:20-33 (parenic conclusion).

Levinson (1994b:59) also contends that Westbrook's resolutions of a highly stratified text into a synchronically coherent one neither illuminate the plain meaning of the text nor its compositional history. Even if the texts can be read that way it is unlikely that they were written that way. Maintaining such a reading of enforced coherence entails specific hermeneutical moves, grounded less in the texts themselves than in hermeneutical need, the claim that the cases are different save the coherence of the canon. What triggers such a reading is an external construct, the assumption or the creation of a meta-system of law whose origins are ultimately independent of the text yet which seek confirmation in it. The 'common law', subsuming individual texts to a larger system that assumes coherence, has all the attributes of an exegetical harmonised scriptural canon. Westbrook then concludes that a diachronic analysis of biblical law is truer to the compositional norms of both cuneiform and Israelite literature. It accounts for the specifics of the text more coherently. Levinson further advances this hypothesis in his more recent work (1998) discussed above, which motif centres on how the authors of Deuteronomy drew on and transformed earlier literary sources, especially the Covenant Code, in order to mandate a major transformation of religion and society in ancient Israel.<sup>49</sup>

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<sup>49</sup> There are other scholars who critically review and reflect on Westbrook's synchronic hypothesis of the "meta-coherence" of the Covenant Code and offer one form or another diachronic approach. Samuel Greengus (1994:60-87),

On a different note, Jackson (2000) examines a variety of semiotic issues in the study of biblical law in terms of its users, its medium and its message in the structure of the Decalogue, the role of the law of postulates, covenant renewal, and talionic punishment. He then asserts that, in spite of the existence of the written law codes in the Ancient Near East, sometimes the ruling of the courts conform to the code, but frequently they do not. The court records contain no quotations or even citations of the rules contained in the codes. Jackson (2000:114-121), therefore, argues that modern model of law based upon the ‘application’ of statutes in court is not applicable to the Ancient Near East or biblical law codes. He then lists alternative models that have been advanced:

- The ‘codes’ were to be consulted by judges, as a source of persuasive though not binding authority (cf. Westbrook 1989:202, 1990:547-548, 1998:215, n.3; Greengus 1994:79; Jackson 1995:1747-1748, n. 10).
- Their purpose was academic or didactic, whether for some kind of advanced ‘civics’ education (Kraus 1960:283-296; Otto 1994:161) or in some cases as purely scribal exercises (notably, the Sumerian sources [Roth 1995:40-45]).
- They were designed for professional education, specifically for the training of judges (Otto 1994:160-163; *contra* Greengus 1994:84).
- Their purpose was monumental, ideological, a ‘royal apologia’ (Finkelstein 1961:103; Fitzpatrick-McKinley 1999:143-144; *contra* Otto 1994:161-162). The apologia function is particularly plausible when the laws are displayed publicly on a stela.

Van Houten’s (1991:29-30) assertion perhaps provides a good summary for the above models:

When the laws are sandwiched between a prologue and epilogue which proclaims the deeds and divine mandate of the king, then the law collection is part of a royal apologia. When the laws are preserved without

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working from the perspective of cuneiform law, counters two of Westbrook’s fundamental postulates: his assumption of a single, coherent ‘common law’ embracing the Ancient Near East and Israel and his denial of legal-historical development. Martin J Buss (1994:88-90) applies the distinction between natural and positive law to the question of whether or not the biblical and cuneiform legal collections were normative and binding and, if so, why were they not cited in contemporary documents. Sophie Lafont (1994:91-118), by systematically re-examining what biblical scholars presuppose when they speak of ‘law’, ‘legal code’, ‘casuistic’ or ‘apodictic’ law, and ‘interpolation’, and arguing for cultural pluralism against a uniform ‘common law’ in the Ancient Near East, introduces new evidence for the creation of law by demonstrating the transformation of a private royal ruling into a general legal principle. Victor H Matthews (1994:119-135) offers a social-scientific analysis of the institution of slavery in the Ancient Near East and of the slave law in the biblical text. He argues that legal-historical development took place in ancient Israelite law prior to the canonisation as a necessary consequence of changes in the social world. William Morrow (1994:136-159), by analysing the origins of the second-person genre of legal formulation in the Covenant Code, argues that it points to the combination of provisions from different legal traditions and thus to legal-literary development. Dale Patrick (1994:152-159), arguing that important conceptual development did take place as Israelite authors developed their own systems of law and ethics, asserts that form criticism, drawing on rhetorical theory, helps explain why the Covenant Code was composed. Finally Eckart Otto (1994:160-196) provides an independent statement of the issues and systematically marshals the evidence for legal-historical development. He also studies the literary revision within each of the cuneiform legal collections as well as within the Covenant Code and Deuteronomy. He then points to redactional structures that reveal extensive textual revision in the service of legal, ethical and theological ends (see Levinson 1994a:13-14).

the prologue and epilogue, when there is evidence that they are being recopied with changes and additions being made, and when they are uncovered in a location at which legal disputes are settled, then the laws are functioning as a set of precedents which are referred to in the process of adjudication. Finally, when the laws are uncovered in scribal schools, and show so signs of revision, then the laws have become canonical, or classical literature – part of the venerated tradition which is passed on unchanged.

### ***Deuteronomic Code’s recitation and recontextualisation of the Ancient Near East law collections***

We have noted above that half of the legal materials contained in the Covenant Code have Deuteronomic parallels. But Deuteronomic Code has its own materials that have no Covenant Code parallels. This could be a result of Deuteronomy’s independent recitation of other Ancient Near East law collections (cf. Kalland 1992:19). For example, the central primogeniture motif of Deuteronomy 21:15-17 is a theme that does not have direct Covenant Code or Holiness Code parallels but it has narrative parallels (see below under the “sacred/theological texture”). Both Deuteronomic Code and narratives seemed to have known and therefore referred to the tradition of primogeniture. It could be that the author(s) of primogeniture texts of both Deuteronomy and narratives had access to or knew about the Ancient Near East texts relating to primogeniture discussed in Chapter Two, especially the Middle Assyrian Laws (MAL) Tablet B §1 (Ancient Near East T 185b).

### ***Deuteronomic Code’s recitation and recontextualisation of the Holiness Code***

Levine (1989:111) tabulates the similarities between the three “law codes” of the Pentateuch owing to their emphasis on the interdependence of all Israelites in every aspect of life, including their history and shared destiny.

<b>Theme</b>	<b>Covenant Code</b>	<b>Deuteronomic Code</b>	<b>Holiness Code</b>
Prologue: proper modes of worship	Exod 20:19-23	Deut 12	Lev 17
Epilogue: blessings and execrations	Exod 23:20-33	Deut 27-30	Lev 26:3-46
Duties that pertain to the land	Exod 23:10-11	Deut 15; 24:19-22; 26	Lev 19:9f.; 25
A calendar of sacred occasions	Exod 23:12-19	Deut 16:1-7	Lev 23

However, the relationship between Deuteronomy and the Holiness Code is a complex one. Before we come to some kind of conclusion concerning the relationship between Deuteronomy and the Holiness Code, it is important to first briefly review the relationship between Deuteronomy and the Priestly Writings as a whole. Wellhausen (1885), as his sequence of JEDP clearly indicates, offers

serious arguments for the late date of the Priestly writings.<sup>50</sup> But Wellhausen's hypothesis of P as later than D is not without objections. Those who object to Wellhausen's theory (cf. Collins 2004:175) argue that "while there is no clear case of Deuteronomic influence on P, there are several cases of Priestly influence on D." For example, some of Deuteronomy's references to past commandments are found only in Leviticus (cf. scale disease of Deuteronomy 24:8 as referring to Leviticus 13-14; dietary laws in Deuteronomy 14 as adapted from Leviticus 11). But this hypothesis of the Priestly influence on Deuteronomy too is not that clear.

Returning to the Holiness Code, it is different in many respects from Deuteronomy. The most outstanding difference is concerning the giver or speaker of the "law." Boecker (1976:189) identifies that, while the latter is the speech of Moses, a human, the former is stylised as a divine discourse, not as a human one. In Deuteronomy, the "material is very diverse and in part rather disjointed... [T]he Holiness Code gives an impression of unity and completion... [T]he legal demands expressed in the Holiness Code seem to constitute an argument characteristic of no other law collection... [T]he Holiness Code therefore thinks through and expresses theologically an element which has basic validity for Old Testament law" (Boecker 1976:189; his abbreviation H expanded as "the Holiness Code").

In the same vein, for Weinfeld (1972:187-189), the main and astonishing difference between the Holiness Code (the Priestly sources) and Deuteronomy is the marked absence of civil ordinances in the former while the latter is occupied with it a great deal. For example, incest (Lev 18:24-30; 20:22-27) is conceived as a distinctly sacral matter and not one which concerns civil law in the Holiness Code. It is a sin defiling the land and desecrating the holy name of God who dwells in the land, while Deuteronomy rests on a distinctly secular foundation.

Some (see Boecker 1976:186-189 and literature cited there) believe that the Holiness Code was an older independent material which was incorporated into later Priestly writings (Leviticus). For those who subscribe to this point of view, the materials of the Holiness Code are older than that of the Covenant Code and Deuteronomy themselves. The Holiness Code shares with Deuteronomy the

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<sup>50</sup> The following are Wellhausen's (1885) arguments for the provenance of D over P: (1) The centralisation of the cult was an innovation in the time of Josiah. Deuteronomy reflects this innovation, and addresses the question of centralisation directly. In contrast, centralisation is taken for granted in P. (2) Related to this is the question of profane slaughter. Deuteronomy allows the slaughter of animals for food apart from sacrifice, and this permission is clearly related to the restriction of sacrifice to Jerusalem. Profane slaughter is taken for granted in P, but is explicitly forbidden in H (Leviticus 17). The acceptance of profane slaughter in P presupposed the Deuteronomic reform. (3) Deuteronomy does not distinguish clearly between priests and Levites, and often refers to "Levitical priests." In the Priestly source, however, the Levites are clearly subordinated to the priests. (4) Finally, the cultic calendar in Leviticus is more developed than that of Deuteronomy (Collins 2004:174).

interweaving of the legal principles with parenthesis (Boecker 1976:188-189). From this perspective the Holiness Code is “very closely akin to Deuteronomy” (Von Rad 1963:36). Based on the above arguments, we could possibly conclude that the ancient Holiness Code was eventually incorporated into the Priestly writings. A comparison with the Holiness Code and Deuteronomy shows that the former builds on some assumptions of the latter (cf. Boecker 1976:187). “[T]he climatic position eventually accorded to Deuteronomy ensured that for many people it would provide the lens through which the Pentateuch would be interpreted in later tradition” (Collins 2004:178).

### ***Deuteronomic Code’s recitation and recontextualisation of narrative instructions***

As Brueggemann (2003:17) rightly notes, a great deal of energy and time have been spent in seeking to understand the relationship between the so-called legal materials and narratives in the Pentateuch. As reviewed in Chapter Three, according to Carmichael, a leading proponent in the bid to understand this relationship, Torah-narratives and Torah-legal materials in the Pentateuch have strong literary dependence and links. Legal materials in the Pentateuch, especially the laws in Deuteronomy, do not address actual problems in life. Nor do these laws govern real life situations. They are pieces of literature that address situations in the narratives. Furthermore, Sailhamer (1992), as his title, *The Pentateuch as Narratives*, suggests, proposes to read all the materials of the Pentateuch as narratives or narrative-instructions. In the same vein, a century earlier, Driver (1895:iv-vii) asserts that Deuteronomy 21:15-17 “does not institute the right of the firstborn, but invests with its sanction and establish usage, and guards it against arbitrary curtailment.” Because Torah (both legal and narrative materials) is not just a piece of legalistic dos and don’ts, but stories/narratives of God’s way of life where God’s presence is experienced, following this way is not a burden but a joy for the Psalmist who sings: *ytxyXi ayh ~Ayh-#k ^trwt ytbha-hm* (O how I love your instruction! it is my meditation all the day [Ps 119:97]).

Presenting a strong case for literary dependence of one another and inseparable relationship of between the legal materials and narratives in the Pentateuch, Adele Berlin (2000:30-31) asks:

Is the Torah a series of legal collections with narrative sections serving as the glue that holds them together, or is the Torah primarily a narrative, with some blocks of legal material inserted here and there? ... Is the narrative the background for the laws or is the law a detail of narrative?

Answering her own questions above, Berlin (2000:31) then concludes:

This is like asking whether in the perceptual puzzle the image is an urn or a human profile. In the Torah, there could be no set of laws without the narrative of revelation and no narrative of revelation without the laws. The laws would have no *raison d’être* without the revelation narrative and the revelation would have no content

without the laws. While we need to continue to analyze individual laws and law collections, we also need to consider the possibilities of more profound meanings that the laws together with their narratives may evoke.

Now returning to our primary text, as reviewed in Chapter Three, Carmichael (1985:142-145) has hypothesised that Deuteronomy 21:15-17 has a literary background and relationship with Genesis texts that deal with Jacob's problem with his firstborn Reuben:

When the LORD saw that Leah was not loved, he opened her womb, but Rachel was barren. Leah became pregnant and gave birth to a son. She named him Reuben, for she said, "It is because the LORD has seen my misery. Surely my husband will love me now" (Gen 29:31, 32, NIV). While Israel was living in that region, Reuben went in and slept with his father's concubine Bilhah, and Israel heard of it (Gen 35:22, NIV). Reuben, you are my firstborn, my might, the first sign of my strength, excelling in honour, excelling in power. Turbulent as the waters, you will no longer excel, for you went up onto your father's bed, onto my couch and defiled it (Gen 49:3, 4, NIV).<sup>51</sup>

The hypothesis of Carmichael and Berlin discussed above that the laws (Deuteronomy) have literary backgrounds and relationship with narratives may not be easily rejected. Consequently, Carmichael's assumption that narratives as literature are older than Deuteronomy; that the laws of Deuteronomy do not address actual problems in life; and that these laws do not govern real life situations remain subjects of debate. However, suffice to say that there are indeed biblical examples where the laws are actually applied. For example, Naboth was "tried" before the people and stoned to death on the ground that he "blasphemed/cursed" both God and the king, albeit a false accusation (1 Ki 21:8-14).

### ***Deuteronomistic History's and Chronicler History's' recitation and recontextualisation of Deuteronomic Code***

Not only Deuteronomic Code recites and recontextualises older texts, Deuteronomic Code itself is recited and recontextualised by Deuteronomistic historical books (Joshua – 2 Kings) as well as Chronicler historians. Deuteronomistic and Chronicler theologians believe Israel's (both northern and southern kingdoms) destruction and subsequent exile as God's punishment for Israel's failure to observe Deuteronomic legal instructions. Israel's history is thus written and rewritten from a theological-ethical perspective in the Deuteronomistic and Chronicler historical books in a "rhetorical form of warning and urging" that obedience to the Deuteronomic legal instructions will result in blessings while disobedience will result in curse – destruction and exile (Brueggemann 2003:86).

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<sup>51</sup> For other examples of literary relationship between narratives and the law (Deuteronomy), see Carmichael (1985).

### *Conclusions on recitation and recontextualisation*

Above we have hypothesised that the Old Testament writers' select and recontextualise the Ancient Near East law collections in formulating the legal materials of the Old Testament. However, it should be noted that this recitation and recontextualisation does not necessarily rob the Old Testament of its scriptural authority. It rather illustrates that the ancient Israel was part of a larger Ancient Near East world and the Old Testament offers "an alternative perception on reality" (Arnold & Beyer 2002:13).

We have noted above that the Ancient Near East and ancient Israel share many common social, economic, religious, political, ideological, and gender traditions. Therefore, one should not be too surprised to discover the overwhelming striking parallels between the Ancient Near East law collections and Old Testament legal instructions, including the instruction/tradition on primogeniture. However, it should be remembered that Old Testament legal instructions are presented as religious instructions that reveal the will and ways of God while most of the Ancient Near East laws are overwhelmingly secular in nature (outside the law there are few Ancient Near East religious texts on gods and goddesses).

It should also be noted that Old Testament texts are as ancient as other Ancient Near East texts. In fact, Old Testament texts are the most comprehensive intelligible ancient texts preserved and discovered so far. Therefore, as much as one appreciates Ancient Near East texts, Old Testament too deserves due respect and appreciation as well. In other words, care must be exercised in the utilisation of the parallel Ancient Near East texts to illumine the biblical texts. When it comes to what the biblical text affirms, to validate it or to fault it based on its parallel Ancient Near East materials would be an incorrect methodology. It should be remembered that the Hebrew Bible is the Scripture of a faith community, who, in many ways chose to be different from their Ancient Near East counterparts. For this reason, even if the Old Testament recites Ancient Near East common civil and criminal laws and recontextualises them according to its theo-political ideologies (see below), it is fully warranted. Therefore, when it comes to what the Old Testament affirms in terms of theology and ethics, the Old Testament texts must have precedence above its Ancient Near East parallel texts. In other words, for theological-ethical affirmations, Ancient Near East texts must be judged by the Old Testament, not vice versa.

One should also be aware that the existence of parallels does not always mean influence. For example, some of the Ancient Near East laws have parallels in the modern laws of different parts of

the world. But this analogy does not necessarily establish a connection between those systems. It simply reflects “the judicial patrimony of humankind: a great number of civilisations protect family and property in a more or less sophisticated way. These *lieux communs* of the universal or, more strictly, oriental laws are compatible with pluralism, diversity, and development” (Lafont 1994:93). In some cases, the Old Testament (ancient Israel) and Ancient Near East texts (Ancient Near East societies) have the same affirmations. In other cases the Old Testament affirmations are in clear polemical opposition to what Ancient Near East texts affirm.<sup>52</sup> This shows that one must be careful not to overly exaggerate and celebrate parallels between Ancient Near East texts and the Old Testament.

If used properly Ancient Near East parallel texts can give a better understanding of the Old Testament texts. In fact, using the Ancient Near East parallel texts to illumine the biblical texts is not a new phenomenon. It has been practised as long as the practice of biblical studies<sup>53</sup> (Hallo 1997: xxiii). However, the improper use of it could rather give a disservice to biblical interpretation. The improper use of the Ancient Near East parallels would, among others, include giving the Ancient Near East texts higher authority by validating or invalidating the Old Testament texts by the former; totally discarding the Ancient Near East parallel texts on the ground that they are not “canonical” texts; and overstressing “the importance of the background materials in the first flush of discovery, and then, when the flaws in the early interpretations have become obvious, to swing to the other extreme of largely ignoring the comparative material” (JJM Roberts 1985:96). Despite the abuses and exaggerations, the discovery of extra biblical texts nevertheless has brought new understanding to the biblical texts. Therefore, Bible interpreters must utilise the extra-biblical sources for a better understanding of the biblical text (Roberts 1985:96). Explaining how a proper use of the extra-biblical sources can yield a new and better understanding of the biblical text, Hallo (1997: xxviii) concludes:

[T]he combination of an intertexture and contextual approach to biblical literature... will continue to yield new meanings on all levels: the meaning that it holds for ourselves in our own contemporary context, the meanings it has held for readers, worshippers, artists and others in the two millennia and more since the close of the

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<sup>52</sup> For example, the Hittite Laws (ca. 1650-1500 BCE) seems to have no prohibition for a man to have bestial sexual intercourse with a horse or mule although it prohibits other bestialities (*COS* 2.19:§200a). There is no reason given as to why bestiality with a horse or mule is permitted while with other animals are prohibited. The Old Testament prohibits all kinds of bestialities (Lev 18:23) and regarded it as perversion.

<sup>53</sup> Hallo (1997:xxiii and works cited there) discovers that “already according to Philo Judaeus, writing in Greek and living in the shadow of the great Greek library of Alexandria in the first half century of the AD, Abraham becomes a speculative philosopher, a role-model for the sect of Jewish ascetics that he described as *therapeutae*. Nine centuries later, Saadiah Gaon, likewise born in Egypt but living in the equally stimulating atmosphere of Abbasid Baghdad, freely employed his knowledge of Arabic to solve cruxes of Biblical Hebrew.”

canon; the meaning that it held for its own authors and the audiences of their times; and finally the meanings that it held when it was part of an earlier literary corpus.

Affirming the traditional understanding of Deuteronomy as a second law, Levinson (1998:6-10) concludes that Deuteronomy revises the Covenant Code. This is the position taken by this research as well. Deuteronomy recites and recontextualises the Covenant Code. For Levinson, the Covenant Code as a text chronologically precedes Deuteronomy and the former was known in whole or part by the authors of the latter. Thus, the attempt to make Deuteronomy precede the Covenant Code do not come to grips with legal history, as they overlook the evidence of historical linguistics and so arbitrarily exclude other Pentateuchal sources from the analysis. Levinson affirms that there is clear precedent in the Ancient Near East for subsequent legal collections by directly revising earlier ones in order to articulate development in juridical thought. The degree of the detailed lexical and syntactical correspondence between Deuteronomy and the Covenant Code is too extensive to be explained otherwise than in terms of literary dependence while divergences can be explained in terms of terminological or legal updating. Levinson (1998:157) thus concludes:

[P]riority is not a matter of chronology but a revisionary and sometimes polemical trope in the author's bid to acquire autonomy and independence. There is, after all, no authorship, no originality, no agency, no freedom, no grace, no love, that is not after the fact, that does not come after, that is not belated, that can avoid coming to terms with predecessors and with the burden of the past. This is the significance of "the repetition of this law."

If a law or instruction must be relevant for a changing society, it must be revised, amended, expanded, and recontextualised accordingly. This seemed to be exactly the case with Deuteronomy's recontextualisation of the Covenant Code. The redactor(s) of the instructions in Deuteronomy would have seen the task as reformulating and expanding the Covenant Code "in keeping with the more evolved social situation at the time of writing. Hence the emphasis placed on the city (Deut 13:12-18; 16:18-20; 22:23-29), on trade practices (Deut 25:13-16), and especially on the role of different institutions, including the cult, within a centralised state system (Deut 12:17-18)" (cf. Blenkinsopp 1992:210). This view of Deuteronomic Code's recitation and recontextualisation of older texts is also supported by Brueggemann (2003:93):

The book of Deuteronomy stands as the primal example of the dynamism of the Torah tradition whereby old memories are endlessly re-presented and reinterpreted, rearticulated, and reimagined in ways that keep the main claims of faith pertinent and authoritative in new circumstances. It is this vitality of the Deuteronomic tradition that was a key factor in permitting Judaism to flourish even after it lost the conventional supports of

temple monarchy and city in the crises of 587 BCE and in the ensuing period of exilic displacement (Brueggemann 2003:93).<sup>54</sup>

In the final analysis, the redactional development of the Israelite judicial system from early periods to the postexilic times may be summarised as follow (Bosman 1991:196):

Period	Context	Functionaries
Prior to the establishment of state (before 1000 BCE)	Family	Father as <i>paterfamilias</i>
Age of monarchy (1000-587 BCE)	City gates Royal court Local cultic place	Elders King Levites
Postexilic age (after 539 BCE)	Temple	Priests

Above, we have analysed Deuteronomistic Code's recitation and recontextualisation of other texts and vice versa. We have also discussed the relationship between the three codes; Covenant, Holiness, and Deuteronomistic (for fuller lists of synopsis of the Covenant Code, Holiness Code, and Deuteronomistic Code, see **Excursus Six**). Our next task is to analyse Deuteronomy 21:15-17's recitation and recontextualisation of phrases, clauses, themes and concepts of other texts and/or vice versa.

#### 4.3.2.1 Deuteronomy 21:15-17's recitation and recontextualisation of other texts

⌘ ... vya ... yk

First of all, this formula of "if... a man ... then" (yk in verse 15 followed by ⌘ in verse 16) is found throughout the Deuteronomistic Code, it is a recitation of the stipulations of the Covenant Code formula, which in turn is a recitation of the casuistic law formula of the Ancient Near East (Mesopotamian) law collections (see Chapter Two; cf. Hagedorn 2004:202). For this reason and since Deut 21:15-17 has no direct parallels in the Pentateuch, Watts (1970:259) and Hagedorn (2004:202-203) even regard Deuteronomy 21:15-17 as an Ancient Near East legal form taken over in totality with no sign of reworking in Deuteronomistic style.

<sup>54</sup> The same generative tradition categories show up later in Christian articulations that practises the same kind of ongoing interpretation (Brueggemann 2003:93).

vja

A man [vja], a test case for the “law”, is a direct corresponding word for the Akkadian *awilu*. This view is supported by the law of succession of the first-born in Deuteronomy 21:15-17. This ordinance differs from the preceding one. It is not composed in the second person singular, but in the impersonal legal style throughout. As a result, no trace of the specifically Deuteronomic method of framing laws can be recognised in it (Von Rad 1966:137-138). The family “laws” of Deuteronomy 21:15-17 and 21:18-21 as well as 21:22-23 are introduced in a similar way, using *jk* + *hyh* + *vja* + *l/b*. This formula is found mainly in Deuteronomy. With exception to Leviticus 22:12 and Numbers 30:7, all seemed to be rooted in ancient marriage formula (Hagedorn 2004:201-202).

It has been fully established that the book of Deuteronomy is patterned after that of the second millennium Hittite and Assyrian royal treaties. A treaty was an instrument commonly used for the establishment and regulation of obligatory relationships between the great king and his vassal king or the master and his servant during the Old Testament times in the Ancient Near East especially the Syro-Hittite Late Bronze Age. The two most commonly practised treaties of the Ancient Near East were the “Royal Grant” and the “Political Treaty.” The structures for both the grant and treaty are the same. They include: preamble/identification of the covenant giver, historical prologue, border delineation (of the vassal’s reign), stipulations, witnesses, blessings and curses, ceremonial ratification of the covenant, and deposit and periodic public reading<sup>55</sup> (cf. Weinfeld 1972:59-157; 1993:223-264; Mendenhall & Herion 1992:1179-1202; Youngblood 1995:21).

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<sup>55</sup> *Preamble*: This is an introduction to the covenant. It typically begins with the formula “The words of ...” followed by the name of the Hittite King (the “Great King”), his genealogy, and his various titles, ending with the epithet “the hero.” *Historical prologue*: This section identifies the recipient of the covenant and states reasons why the great king initiates the covenant with his vassal king. The past benefits the great king had bestowed upon the vassal (in the treaty) and the vassal’s (servant’s) loyalty and service to his king (master) (in the grant) serve as the foundation for the present obligation of the vassal to be obedient to the stipulations of the covenant and the master’s obligation to grant land or other benefits to his loyal servant respectively. *Border delineation*: The borders of the land (kingdom) of the vassal king where the treaty will affect are clearly delineated. *Stipulations*: This section, often phrased in the case law format (“if ..., then ...”), describes the interests of the great king that the vassal is bound to protect and obey under the covenant relationship. *Witnesses*: The gods are called upon to witness the covenant; they will also implement the curses of the oaths if the covenants were violated. *Blessings and curses*: This section describes the consequences of obedience and disobedience with which the witnesses to the covenant (the gods) reward or punish the vassal (the servant). *Ceremonial ratification*: The covenant is ratified by the animal sacrificial ceremony. The sacrificed animal represents, and is identified with, the vassal who is being placed under oath: just as the animal is slaughtered, so will the vassal and his dependants be if he violates his oath. *Deposit and periodic public reading* (mainly with the treaty): A copy of the covenant is deposited in the temple as an act and object of sacred placing the treaty within the interests of the local deity and under its protection. A periodic reading of it implies that the treaty is a public interest, which is integrated into the “law” of the vassal’s kingdom (cf. Weinfeld 1972:59-157; 1993:223-264; Mendenhall & Herion 1992:1179-1202; Youngblood 1995:21).

Although both the grant and treaty follow these same structures, there are, however, some differences in their functions. The political treaty or suzerain-vassal treaty is usually a covenant made between a great king (suzerain) and his vassal king. The suzerain claims absolute right of sovereignty over his vassal, demands his total loyalty and service, and pledges protection of the vassal's kingdom and dynasty. In turn, the vassal pledges absolute loyalty to his suzerain and exclusively relies on the suzerain's protection. In the treaty, the vassal king has an obligation to his great king (suzerain). Thus, the curse is directed to the vassal who violates the rights of his suzerain, and the treaty is made for an inducement to the vassal's future loyalty to his master. In contrast, the grant (of land or some other benefits) constitutes an obligation of the master to his servant. It is a reward for loyalty and good deeds already performed by the servant. Thus, the curse is directed toward anyone who violates the rights of the servant. In the Hittite royal land grant, the sovereign will punish the vassal if he violates the covenant but he will not cancel his commitment (Fachai 2001:46-47 and works cited there).

The book of Deuteronomy resembles more of a political suzerainty treaty than a grant (Phillips 1973:4). The following structural contents of Deuteronomy vividly resemble that of the Hittite royal treaty (cf. Weinfeld 1972:59-66; Dillard & Longman 1994:97):

1:1-5	<b>Preamble/identification of the covenant giver</b> - Yahweh (see also 5:6)
1:6-3:29	<b>Historical prologue</b> - Yahweh's bringing Israel out Egypt as reason for Yahweh making a treaty with Israel (see also ch 5; 9:7-10:11)
1:7-8	<b>Border delineation</b> - assumed the borders demarcated in Genesis 15:19-21 and Exodus 23:23, that is, from the Red Sea to the Sea of the Philistines and from the desert to the River, that is, the land of the Amorites, Hittites, Perizzites, Canaanites, Hivites and Jebusites
Chs 4-26	<b>Stipulations</b> - Basic (4:1-11:32); Detailed or covenant clauses (12:1-26:19).
31:16-32:47	<b>Witnesses</b> - Moses and the people of Israel (see also 4:26; 30:19; Exod 24:3; Jos 24:22, 27; Zep 1:12). Deuteronomy also invokes "Heaven and Earth" as witnesses (4:26; 30:19; 31:28); no such invocation is found in Exodus (cf. Weinfeld 1972:62)
Chs 27-28	<b>Blessings</b> for obedience and <b>curses</b> for violations of the stipulations
Chs 29-30	<b>Ratification</b> (especially 29:9-28)
Chs 31-34	<b>Deposition and periodic public reading:</b> Deposit (31:24-26; 10:1-5): probably it is deposited in the ark (cf. 31:26) and later in the Temple. Periodic reading (31:9-13; 17:19) is to be made in the presence of the leaders and its subjects. Duplicates and copies are also to be made (17:18-19; 31:25-26). Probably the Torah discovered during Josiah's reign was probably the one deposited in the Temple – deposited well but neglected its periodic public reading)

Deuteronomy 21:15-17 falls under the stipulations of a treaty between Yahweh and his people Israel. However, as noted above, the primogeniture “law,” the central motif of the text is peculiarly the “Deuteronomic Code” (cf. Driver 1902 [1895]:246), that is, it is not found in the other two law codes. Thus, Deuteronomy 21:15-17’s recitation of the Covenant Code is not in terms of its central motif of primogeniture, but largely in terms of forms. Even within Deuteronomy, this is the only text that deals with the “law” of primogeniture. However, in terms of marriage and family matters, Deuteronomy 21:15-17 has intertexture relationship with other texts in the Deuteronomic Code (we will return to this under the “social and cultural texture”). We have provided parallel and cross references for different words of Deuteronomy 21:15-17 under the philological and semantic studies above (see under “inner texture”). Therefore, we will not provide all the parallel or cross references of the words in our analysis of recitations. In what follows, our analysis of the intertexture recitation will concentrate mainly on the phrasal, clausal, and the motifs the text.

~yvn ytv val !yyht-yk

This first phrase of the text, “if a man has two wives,” has Narrative, Deuteronomistic History, and Chronicler intertextuality. It seems to be a recitation of the first instance of polygamy in the Old Testament in Genesis 4:19 where Lamech, the sixth from Adam, is reported to have married two wives: ~yvn ytv %ml Alî-hqyw (Lamech took for him two wives) as well as Jacob’s two wives (Gen 29:15-30:24). In the Deuteronomistic History, Elkanah is reported to have two wives (1 Sam 1:2). In the Chronicler, Ashhur the father of Tekoa is reported to have two wives (1 Chr 4:5). As noted above, “two wives” here is a conventional way of describing polygamy. The attestation of it in the Narratives, Deuteronomistic History, and Chronicler History indicates that the practice is prevalent throughout the history of Israel (polygamous marriage shall be discussed later under “marriage and family” in “social and cultural texture” below).

hawmv txahw hbwha txah

The second phrase, “one loved and the other hated” is reminiscent of the Rachel, Leah, and Jacob’s love-hate triangle story in Genesis 29:16-35 (see also Elkanah’s wives Hannah and Peninah in 1 Sam 1:4-5). Genesis 29:20 describes Jacob’s love for Rachel so vividly and romantically: “So Jacob served seven years to get Rachel, but they seemed like only a few days to him because of his love for her.” But before he could marry Rachel, he had to first marry Leah, Rachel’s older sister.<sup>56</sup> When Rachel was finally given to him, verse 30 says, hal m lxr-ta--g bhayw (and he loved Rachel

<sup>56</sup> Laban’s customary reason for giving her older daughter Leah in marriage to Jacob, “It is not our custom here to give the younger daughter in marriage before the older one” (v. 26), is very similar to the Marâ custom. It was believed that if the younger daughter is married off first, it is likely that the older one would never get married, for people would ask, “What must have been wrong with the older daughter?”

more than Leah), while verse 31 reported Leah as being hated [חַמְסָה]. As noted in the inner texture, these “love” and “hate” are word pairs which are used to describe the state of relationship (cf. Mal 1:2-3). The use of the term חַמְסָה prompted Rabbi Ishmael (see Tigay 1996:195) to comment that the text’s choice of words constitutes a warning that if one marries two wives, he will wind up hating one of them.

As noted in the inner texture above, the term חַמְסָה can also be used for a divorced woman. Deuteronomic and Holiness Codes give instructions for the procedures of divorce if the wife or one of the wives becomes displeasing to the man or is hated by the man (Deut 24:1-4; Lev 21:7, 14; 22:13; cf. Num 30:9). It is possible that the beloved wife was a captive/slave woman the man married as a second wife in the preceding text of 21:10-14 or the other way round. It is significant though that, regardless of the hated wife being the first (Israelite) wife or the second (captive/slave) wife or even a divorced wife, “a husband’s attitude toward his wife cannot affect his legal responsibilities to her and her children” (Merrill 1994:292).

The expression, “one loved and the other hated” as an idiom for the favoured and the unfavoured wife is found also in Arabic, Egyptian, and Akkadian (Gilgamesh Epic 12:23-26, 42-45; see Tigay 1996:382, n. 39; Carmichael 1985:142-145; Christensen 2002:479 and literature cited there).

חַמְסָה רַכְבָּהּ !בְּהַיְהוּ חַמְסָה חַבְוֹהָהּ -יָמַבְּ וְלֹ-וְדָלְיָו

These clauses (see also 17a) report that the loved and the hated wives have both given birth to sons for their shared husband, but it so happened that the firstborn [רַכְבָּהּ/רַכְבָּהּ] is the son of the hated wife. This clause seems to have recited two narratives in Genesis. The notion of both of the wives giving birth to sons re-echoes how both Leah and Rachel (and their maidservants in their names) had borne Jacob sons in Genesis 29:31-30:24 but Leah, the hated wife, gave birth to the firstborn son, Reuben. It is also reminiscent of how both Hagar (the hated wife?) and Sarah (the beloved wife) had borne sons for Abraham, but the firstborn was the son of Hagar, the hated one (Gen 16; 21:1-21).

In the Deuteronomistic and Chronicler histories, we do not know David’s relationship to his wife Maacah the mothers of his firstborn Absalom (2 Sam 3:3; 1 Chr 3:2). Nor do we know David’s attitude towards his wife Haggith the mother of his second oldest son Adonijah (2 Sam 3:4 cf. 1 Ki 1:5; 1 Chr 3:2). Both of these elder sons were denied the throne. However, with regard to Bathsheba, the mother of Solomon, the rhetoric painstakingly presents her as the beloved wife of

David (2 Sam 11:2-5 cf. 1 Ki 1:11-31; 1 Chr 29:10-25). This shows that this ancient story of the influence of the beloved wife on a polygamous husband is also attested even during the pre-exilic monarchical and post exilic Israel.

The firstborn [rkb/rwkb] is the central theme of Deuteronomy 21:15-17. It is mentioned eight times including suffix pronouns in this short text. It is also a central theme of the Old Testament. Based on verse 15d and 17c, it is clear that the firstborn in this text refers to the firstborn of the father, not necessarily that of the mother. In contrast, as noted above, the firstborn in texts dealing with the sacrifice and redeeming of the firstborn refers to the firstborn who must be the firstborn of both the father and the mother.<sup>57</sup> The sanctity of both human and animal firstborn is attested in the Deuteronomic Code (Deut 15:19; 21:15, 16, 17), Covenant Code (Exod 22:29-30), Narratives including Priestly literature (Gen 48:14, 18; Exod 4:22, 23; 11:5; 12:12, 29; 13:1-16; 22:29; Num 3:13, 40, 41, 42, 43, 45, 46, 50; 8:16, 17, 18; 33:4), Deuteronomistic and Chronicler histories (Jos 6:26; 1 Ki 16:34; 2 Ki 3:27; 1Chr 5:1, 2; 26:10; 2 Chr 21:3), Prophets (Jer 31:9; Ezek 20:26; Micah 6:7; Zech 12:10), and Wisdom and Poetic literature Ps 78:51; 89:27) (we shall return to the sanctity, sacrifice and redemption of the firstborn under the “sacred/theological texture” below).

wnb-ta wlyxnh ~wvb

Based on the division [l xll] of the family land [hl xll] and the maximum occurrences of the term both in its nominal and verbal forms in the Deuteronomistic History and Priestly writings,<sup>58</sup> one could argue that this is a late terminology, written after the settlement in the land of Canaan. This must have been the reason we find neither the nominal for hl xll (family inheritance land) nor its verbal form l xll (to inherit, to cause to inherit or to divide as inheritance) in use in antiquity, that is, we do not find the terms l xll and hl xll in the book of Genesis. In Genesis, the land was still a Promised Land that would be realised in future. In Deuteronomistic, Priestly, and prophetic writings, the Promised Land of Genesis becomes a realised family inheritance [hl xll]. The nominal hl xll is frequently used with twba/tba (fathers) in the Deuteronomistic History (cf. Jos 13:23, 28; 14:3; 15:20; 16:8, 9; 18:20, 28; 19:1-48; Jdg 20:6; 2 Sam 21:3; 1 Ki 21:3-4) to emphasise hl xll as a patrilineal family land passed down from father to son, from generation to generation. The concept

<sup>57</sup> But see Tigay (1996:195), who asserts that “the laws about sacrificing and redeeming the firstborn refer to the firstborn of the mother, but not necessarily the firstborn of both the father and the mother (see for example, Exod 13:2).

<sup>58</sup> Cf. l xll in verbal forms: Exod 23:30; 32:13; 34:9; Lev 25:46; Num 18:20, 23, 24; 26:55; 32:18, 19; 33:54; 34:13, 17, 18, 29; 35:8; Deut 1:38; 3:28; 12:10; 19:3, 14; 21:16; 31:7; 32:8; Jos 1:6; 13:32; 14:1; 16:4; 17:6; 19:9, 49, 51; Jdg 11:2; 1 Sam 2:8; 1 Chr 28:8; Job 7:3; Ps 69:37; 82:8; 119:111; Prov 3:35; 8:21; 11:29; 13:22; 14:18; 28:10; Isa 14:2; 49:8; 57:13; Jer 12:14; 16:19; Ezek 47:13, 14; Zeph 2:9, 16; 8:12; Zech 2:16; 8:12.

is also found in Priestly writings (Num 16:14; 27:7; 36:2-8), exilic prophets and Wisdom literature (cf. Isa 54:17; 58:14; Jer 3:19; Ps 111:6; 127:3; Prov 19:14).<sup>59</sup> This shows that when הַלְאֵל is lost the attachment to it even grows stronger.

The phrase, “the day he causes his sons to inherit [from] him” (v 16a), re-echoes Jacob’s “will” to his children in the form of blessings (Gen 49:1-28). For this reason, (Tigay 1996:195; see also Craigie 1976:283) argues that a father could by wills divide his property and give it to his sons as long as he did not violate the tradition of the two-thirds portion share for the firstborn. Although this argument is interesting, a closer look at the text against the backdrop of the parallel Ancient Near East texts (see Chapter Two) indicates that there was an awareness and reference to the existing rules for the division of inheritance.

The phrase, תְּבֵא הַלְאֵל (inheritance of fathers), conveys a meaning of הַלְאֵל as an inalienable land (King & Stager 2001:48-49; see also Bess 1963:56-58<sup>60</sup>). Van der Toorn (1991:206-235) rightly gives two main reasons why הַלְאֵל must not be alienated. The first reason is because it is the ancestral estate, the concrete blessing which successive patrilineal generations inherited. It is the inheritance of the fathers and as such sacred property (1 Ki 21:3). To sell the family land to someone outside the family, therefore, would amount to a religious offence. The purpose of the

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<sup>59</sup> The maximum occurrence of the verb לָאֵל (to inherit, to give as inheritance, to cause to inherit) the הַלְאֵל (family land) is also found in the Priestly Writing, Deuteronomy, and Deuteronomistic History. The following is its distribution: Deuteronomistic Code (Deut 12:10; 19:3, 14; 21:16), the Book of Deuteronomy (1:38; 3:28; 31:7; 32:8), Covenant Code (Exod 23:30; see also 32:13; 34:9), Priestly Writings (Lev 25:46; Num 18:20-24; 26:55; 32:18-19; 33:54; 34:13-29; 35:8), Deuteronomistic History (Jos 1:6; 13:32; 14:1; 16:4; 17:6; 19:9, 49, 51; Jdg 11:2; 1 Sam 2:8), Chronicler’s History (1 Chr 28:8), Prophets (Isa 14:2; 49:8; 57:13; Jer 12:14; 16:19; Ezek 47:13-14; Zep 2:9, 16; 8:12; Zech 2:16; 8:12).

<sup>60</sup> Bess (1963:56-57) asserts that the Old Testament refers to the land held by the Israelites under three different terms. The most general nominal term is הַבְּרִי, from the verb בָּרַח (to take possession, often times by force; to dispossess, to inherit). הַבְּרִי thus refers to property acquired, whether by inheritance or by dispossessing the former owner. Another general term is הִזְחָא (possession/free hold), from the verb חָצַא (to seize, grasp, take hold, take possession). The more specific and more frequently employed term is הַלְאֵל (inheritance), derived from its verbal root לָאֵל (to inherit or divide inheritance). If הַלְאֵל (inheritance) represents a legal aspect of land transfer, הִזְחָא (possession/holding) is the praxis of it. It suggests that the land, which Israel possesses now, did not originally belong to them. By way of God’s gift only does it become her holding (Lev 14:34; Deut 32:49). So, like הַלְאֵל, הִזְחָא conveys a notion that the family land cannot be sold (Lev 25:10f.; 27:22-24). הַלְאֵל and הִזְחָא possession/holding are functionally related and are used together in several cases, but they are not synonyms. הִזְחָא’s (possession/holding) relation to הַלְאֵל (inheritance) is expressed in terms of “land of your possession” or “your land” [חָצַא #רָא] (Jos 22:19), a “possession of inheritance” or “possession by right of inheritance” [הַלְאֵל הִזְחָא] (Num 27:6; cf. Jos 13:29; Ezek 44:28; 46:18), “inheritance of their possession” [חָצַא לְאֵל] (Num 35:2), and a “possession of our inheritance” [חָצַא לְאֵל חָצַא] (Num 32:32). Every Israelite family is entitled an inheritance except the Levites whose inheritance shall be in terms of tithes (Num 18:21-26; 26:62), certain cities (Num 35:2; Jos 14:4), a share in the sacrifices (Jos 13:14; Dt 18:1f.), and God in his service (Jos 13:33; 18:7; Deut 10:8; Ezek 44:28). The distribution of inheritance is according to tribes with their clans and families by lot (Num 26:55; Jos 13-21; Ezek 45:1; cf. Weinfeld 1993:35-36; Bess 1963:57-58).

levirate marriage was to prevent the alienation of the ancestral estate so that the land would remain in the family. The second reason has to do with the existence of an Israelite ancestor cult. Ancestors and family members (who will become ancestors) are buried in the family land. “The concern for the survival of the name of the dead was deeply rooted in the mind of the early Israelites ... One of the core duties of the living was to ‘invoke’ their ancestors” (Van der Toorn 1991:208) which includes periodic offering to the dead. To sell the family land where ancestors were buried and invoked would, therefore, amount to wiping the memory of the dead, thus offending ancestors.

The term חֵלְקֵי אֲדָמָה is never used for moveable properties such as animals in the Old Testament. It is used only for immovable farming land (Hagedorn 2004:205). It is basically the Israelite family land passed down from generation to generation as inheritance (1 Ki 21:3; Deut 4:38; 12:9; 15:4; 21:16, etc).<sup>61</sup> Its origin goes back to Yahweh himself who gave the land of Canaan to their forefathers. The act of receiving their inheritance from Yahweh himself demonstrates a personal bond and relationship between Yahweh and the Israelites (Num 26:52-56; Jos 11:23; 13:7-8; Ezek 48:29). If they receive their inheritance from Yahweh, this also means they have inalienable right to retain. This also means that they have no right to alienate it. This basically means that although individuals may keep their inherited lands as freehold lands, they do not own them, as the ultimate ownership of the land, including individual family inheritances, remains with Yahweh (Lev 25:23; cf. Jos 4:9; 22:19; Ruth 4:5, 10; 1 Sam 26:19; 1 Ki 21:3ff.; Ps 24:1; 39:13-ET 39:12; 119:19; Jer 2:7; 16:8). This is in par with Israel herself as his people (Deut 4:20; 32:8f.). Both the land and the people of Israel belong to God (Wright 1997:75-77; 1990:44-65).

rkbh hawnXh-!b ynp-l [ hbwhah-!b-ta rkbl l kwy al

The clause (16b) may be translated, “he (a man) is not allowed to make the son of the beloved wife the firstborn above the son of the hated wife who is the actual firstborn.” This is a typical legal clause. It assumes the existing “law” of primogeniture. It also knows how fathers had been violating the “law” by displacing their firstborns in favour of younger sons who most likely are the sons of the beloved wives. The same situation was already known from earlier times in the life of Jacob (Gen 29:30); “thus it is clear that the law here is not intended to initiate certain rights for the firstborn, but it is designed to safeguard rights already belonging to them” (Craigie 1976:283). The phrase l kwy al (can also be translated “he is not able”) could also imply that becoming a firstborn is

<sup>61</sup> There are only three texts in the Old Testament that explicitly deal with inheritance: Numbers 27:1-11; 36:6-9 (inheritance by daughters in case of the absence of sons), Deuteronomy 21:15-17 (primogeniture) and Ezekiel 46:16-18). The Ezekiel text is concerned with a prince [ayvni] who gives a present [hntm] from his inheritance [wtl xn] to his son or to one of his servant [wydb[m]. In the case of the present to his sons, it shall become a part of the son’s inheritance. But for the servant, the present shall be returned to the prince upon the servant’s freedom (Hagedorn 2004:206, n. 49, who renders wydb[m] as official).

by birth, that is, by nature, not by nurture. Therefore, the firstbornship is impossible to undo or change. An outsider can never become a firstborn.

The clause is a reverse recitation of how Jacob had made Joseph, the son of Rachel, his beloved wife, the firstborn by displacing Reuben, the actual firstborn, because he is the son of Leah, the hated wife (Carmichael 1985:142-145). The text is also reminiscent of a triangle relationship between Abraham, Sarah (and her son Isaac), and Hagar (and her son Ishmael). Ishmael, the firstborn was displaced by Isaac, the younger son (Gen 16; 21:1-21). Even for siblings of the same mother, there is still tendency to displace in the firstborn in favour of the younger son, sometimes through the influence of the mother herself, as was the case with Rachel's preference of Jacob over his older twin Esau (Gen 25:19-34; 27:1-40). "The status of children was one of the most persistent problems raised by polygamy" (Clements 2001:98). The Deuteronomic legal instruction chooses to differ from the practice of the patriarchs and other Israelite fathers. From now onwards, a father is no more allowed to do what the patriarchs Abraham, Isaac, and Jacob did. The right of the actual firstborn must be protected.

This new instruction "makes the concept of the first-born, in the biological sense, an absolute one and guarantees it against any arbitrary attempt to make it a relative one" (Von Rad 1966:138). The "law" of primogeniture here takes for granted that only sons are heirs. The omission of the instruction concerning inheritance by daughters in the absence of male descendants (cf. Num 27:1-11) here is warranted, as "the law only intends to guard against an arbitrary action which might occur if there are two sons born to different mothers" (Von Rad 1966:138). The concept of the phrase  $\text{יָנִיב-לִּי}$  [ (above the face, that is, ahead of or in preference to) occurs in the second Decalogue of the Covenant Code (Exod 20:3; cf. Deut 5:7; Thompson 1974:229). (We shall examine the concept of the phrase  $\text{יָנִיב-לִּי}$  in relation to honour and shame culture under the "social and cultural texture" below.)

$\text{רַיְכַי הַאִמְּוֹלָה-לְבָבְךָ רַבְחָה-תָּא יָכֵן}$

This is a reinforcement of the previous clause where a man is prohibited from displacing the firstborn. Here, he is commanded to recognise (to have regard to) the actual firstborn, even if he is the son of the hated wife. The verb  $\text{רַיְכַי}$  (root  $\text{רַכַּן}$ ) (to recognise, have regard to) is a technical term for legal acknowledgement (Christensen 2002:479; see also Daube 1969 [1947]:5-7). Its root is widely attested in the Ancient Near East Semitic languages. The author of Genesis would appear to have been aware of the legal and familial ethical requirements for a father to recognise his firstborn

son. Thus Isaac's dim eyesight is apologetically used as an excuse for his failure to recognise [רְכִּיל] his firstborn son, Esau. In this sense, Deuteronomy 21:15-17 is a reverse recitation of Genesis 27:23. Isaac did not recognise [רְכִּיל] Jacob's fraud, which also implies that he did not recognise the firstborn Esau, for he could not differentiate Esau's skin from that of the goatskin. Israelite fathers must not follow Isaac's way who failed to recognise his firstborn.

Deuteronomy 21:17a instructs an Israelite father to recognise [רְכִּיל] the firstborn even if he is the son of his hated wife ("oppressed" section of the polygamous family). This is in line with the instructions of the Deuteronomic Code and Wisdom Literature – a just law and a wise saying would demand the practice of justice. The term רְכִּיל is frequently used with the negative אַל to instruct leaders and the people of Israel not to practice partiality. They must not favour the rich and powerful over the poor and the weak (Deut 16:19; 21:17 cf 1:17; Job 34:19; Ps 142:5; Prov 24:13; 28:21). In the narratives, Judah recognised his seal and cord which resulted in his recognition of his daughter-in-law Tamar's condition and plea (Gen 38:35). Boaz recognises Ruth, an alien foreigner. Lamentations 4:8 laments how the Israelites, once a proud people, are not recognised anymore because of their pitiful situation as a result of their destruction and exile. Jeremiah then reaffirms that God does recognise the alienation and downtrodden situation of the exiled Israelites (Jer 24:5). The exilic text of Isaiah 63:16 is a prayer for God's recognition of the suffering and shame of the Israelites because of their destruction and exile. The weak, the poor, the oppressed and exploited individuals and societies or sections of society must be recognised and justice served.

~יְמִינֵי יָד

This is the first and only mention of ~יְמִינֵי יָד (two-thirds) of inheritance right/share for the firstborn. The text presents us with a scenario of the sons dividing their paternal estate, that is, they would not keep it undivided as joint holdings. Scholars are divided concerning the two possible meaning of ~יְמִינֵי יָד in Deuteronomy 21:17. Some argue that it is two-thirds for the firstborn as opposed to one-third for the remaining brothers (cf. Noth 1961:19; Phillips 1973:142; Tigay 1996:195-196; Christensen 2002:479). Others argue that it is two/double portions for the first born as opposed to one portion for each of the other brothers (cf., McConville 2002:331; Bendor 1996:176, Beitzel 1986:179-90; Davies 1986:341-347; etc).<sup>62</sup> The biblical reference for the phrase ~יְמִינֵי יָד is found

<sup>62</sup> This meaning was accepted by the rabbinic sages and in their wake by traditional exegesis, as well as by most modern commentators such as Driver (1902:246-247), *Deuteronomy*; Pedersen (1926:59), *Israel, Its Life and Culture*; Mendelsohn (1970:160), *The Family in Ancient Near East*; Boyer (1958:270-272), *Textes Juridiques* (ARM Vol 8) = *Archives royales de Mari III: Textes Juridiques et administratifs* 1; Milgrom (1976:337-338), *First-Born*; Hartom (1954:123-126), 'רְכִּיל, רְכִּיל'; Brin (1971), *The First-Born in Israel in the Biblical Period* (cited in Bendor 1996:176, n. 141).

only in two other places – Deuteronomic History (2 Ki 2:9) and Prophets (Zech 13:8). The notion of the one who receives a  $\sim\text{מִן} \text{יֶרֶב}$  inheritance share as the prime heir and successor must have been an understood idiom and tradition. Thus Elisha’s request to be given a  $\sim\text{מִן} \text{יֶרֶב}$  spirit-inheritance from Elijah (2 Ki 2:9) must be understood against this background – Elisha was basically asking to be accorded the prime successor of Elijah’s spiritual (prophetic) ministries by receiving the spirit of Elijah in full. From this respect, the Hebrew idiomatic meaning for  $\sim\text{מִן} \text{יֶרֶב}$  would indicate a position of successor (Kalland 1992:133).

$\sim\text{מִן} \text{יֶרֶב}$  means exactly “two-thirds” in Zechariah 13:8. Zechariah divides the whole population of the land into three out of which “two-thirds [ $\sim\text{מִן} \text{יֶרֶב}$ ] will be struck down and perish. Yet one-third will be left in it” (NIV). “Two-thirds” here represent the striking down of almost the entire populations and a third a few remnants. Thus, based on the usages of  $\sim\text{מִן} \text{יֶרֶב}$  in both 2 Kings and Zechariah, it is best to interpret  $\sim\text{מִן} \text{יֶרֶב}$  in Deuteronomy 21:17b as two-thirds or the prime estate. This idiomatic usage of  $\sim\text{מִן} \text{יֶרֶב}$  for two-thirds portion could be influenced by the Egyptian idiomatic usage of the same. In Egyptian, “two mouths” means “two thirds” (Gardiner 1957:197, 452, cited in Christensen 2002:479). In line with the JPS Hebrew English Tanakh version’s literal translation of it, Tigay (1996:195-196) clearly argues that  $\sim\text{מִן} \text{יֶרֶב}$  inheritance share for the firstborn in Deuteronomy 17b means a two-thirds of the entire estate. In defending this, Tigay (1996:196), citing an adoption contract from Mari that stipulates that the chief heir would receive two-thirds of the estate no matter how many other heirs there might be (ARM 8:1; cf. Ancient Near East T 545, no. 13, where Finkelstein translates “double share”), argues that meaning of this two-thirds portion should not surprise the modern readers. There were several varieties of firstborn inheritance rights in the Near East. In some places the firstborn received the entire estate,<sup>63</sup> in others an extra ten percent or a double share; and in others he received an equal share, but was entitled to choose his share first. Even in medieval England the chief heir received the entire estate (cf. Lipiński 1985:347). Christensen (2002:479) notes that similar laws in Scandinavia were responsible for the Vikings of the eighth to tenth centuries C.E. who were primarily “younger sons” who were obliged to find their “inheritance” abroad as pirates.

Differing from the JPS Tanakh’s interpretation, Tsevat (1975:126) and Brin (1994:240-247) reject the two-thirds interpretation in favour of two portions, that is, the estate shall be divided equally

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<sup>63</sup> This was the case with the Marâ people. The heir (firstborn in most regions and lastborn in a few regions) received the entire estate whereby older/younger brothers were given gifts.

according to the number of sons plus additional share for the firstborn. According to this interpretation, if there are two sons, the estate shall be divided into three equal portions and the firstborn shall receive two portions while his younger brother receives a portion. If there are three brothers, the estate shall be divided into four equal portions and the firstborn shall receive two portions while his two younger brothers receive a portion each, etc. Even from this system, if there are only two sons, like the case of Esau and Jacob on which narrative the primogeniture “law” of Deuteronomy 21:15-17 probably hinges (cf. Carmichael 1985:142-150),<sup>64</sup> the firstborn would receive two-thirds of the entire estate. This is another example to support  $\sim\text{מִן שְׁלֹשׁ}$  as an idiom of two-thirds or prime inheritance. The phrase that follows,  $\text{כֹּל אֲשֶׁר מָצָא לוֹ} \text{לְבָב}$  (of all which is found to him, that is, of all he possesses) too would make a “two-third” interpretation more logical. If it is a mere two shares, why bother so much, as it would not make much difference? As Bendor (1996:176) rightly notes, the interpretation of this “two mouths” inheritance share is a controversial issue. However, suffice to say that, for the sake of consistency and logic, the firstborn being the prime heir, that is, the one who would continue the family name and shoulder the extended family responsibilities, for him to receive two-thirds of the entire estate would not be an unreasonable preference (cf. Brin 1994:243-244). Although Brin advocates “double portion” meaning, his construct of the firstborn’s share as “two portions of land from the estate adjacent to one another, that is, that the inheritance of the first-born was not to be physically divided” would agree better with a two-third or prime inheritance construe (Brin 1994:245 who cites b. B. Bat. 12b, 12a).

As noted above, scholars have not reached a consensus on the meaning of  $\sim\text{מִן שְׁלֹשׁ}$ . The  $\sim\text{מִן שְׁלֹשׁ}$  in Deuteronomy 21:17b could actually mean a “double portion” (two shares) other than “two-thirds” of the entire estate, as was interpreted by Ben Sira (Sir 12:5; 18:32). If so, this would be a later development/edition where the Deuteronomistic theologian/redactor recites the contemporary Ancient Near East texts of Assyria, Nuzi, and Ptolemaic Egypt, where the estate was divided into shares equal to the number of sons plus one for the firstborn (see Chapter Two of this research; see also Tigay 1996:382 n. 4; Mendelson 1959:38-40; Milgrom 1976:337-338). If a two-thirds inheritance for the firstborn indicates his prime heirship, then this would affirm that primogeniture was a generally practised custom of both ancient Israel and Ancient Near East.

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<sup>64</sup> Carmichael (1985:145) further argues that the  $\sim\text{מִן שְׁלֹשׁ}$  in Deuteronomy 21:17, rather than representing a customary practice, is the lawgiver’s interpretation of Jacob’s settling of prime inheritance upon Joseph by giving him a “double portion” (Jacob took two of Joseph’s sons and gave each a territorial and other blessings equivalent of his other ten sons).

## מָא תַּוּרָא אַח־יָק

This clause (17c) states that the firstborn (he) is the first fruit of his (father's) procreative/generative strength/seed. This is a recitation from Jacob's description of his firstborn son Reuben in Genesis 49:3 which reads: מָא תַּוּרָא יָקוּ . . . יָרְכֵב "my firstborn, my might, and the first fruit of my generative strength/seed" (see also Ps 78:51; 105:36). The phrase is a common description of the firstborn who is proof of his father's procreative sexual virility, which further serves as a token of the firstborn's future fertility (cf. Tigay 1996:196).

The importance, significance, and sanctity of being the תַּוּרָא (first fruit, beginning) and its theology and nuances are attested in several texts of the Old Testament, especially the Priestly texts (we shall return to this below under the "sacred/theological texture"). The firstborn tradition and practice was considered so important in ancient Israel that when the twins Zerah and Perez were born, the midwife had to tie a crimson thread to Zerah, the firstborn, so that there would be no mistake about who was born first (Gen 38:27-28). The sanctity and significance of מָא תַּוּרָא is that "a man first gives indication of his virility and capacity to sire succeeding generations when his first son is born (cf. Gen 49:3; Ps 105:36);" thus "it is altogether fitting and proper that that son who gave the father such recognition be recognized himself for what he symbolized" (Merrill 1994:293). As noted above, מָא תַּוּרָא (the first fruit of his procreative seed/strength) here does not necessarily mean the first child of the father. In a patrilineal society, a sonless man is no different from a childless man, as he does not have a son who would continue the procreation of his line. Thus, it is understandable that the first son is regarded as the first fruit of a man's procreative seed/strength.

The firstborn as the successor of family and throne is echoed in both the Deuteronomic and Chronicler texts. Bathsheba and her son, King Solomon, do not deny Adonijah's claim to the throne on the basis of he being the oldest living son of David (1 Ki 2:15; 22). That is the same reason Solomon had to eliminate him lest he would claim the throne again (1 Ki 2:23-25). When the King of Moab was losing the battle against Israel, he was reported to have taken "his firstborn son, who was to succeed him as king, and offered him as a sacrifice on the city wall" to induce the deity Chemosh to come to his aid (2 Ki 3:27). Ahaz (2 Ki 16:3; Jer 7:31) and Manasseh (2 Ki 21:6), kings of Judah, too sacrificed their sons as burnt offering although it is not clear whether these sons were firstborns. The Chronicler reports how Hosah the Merarite appointed his son, Shimri, to be the first of his brothers although he was not the firstborn (1 Chr 26:10). The Chronicler clearly saw a discrepancy here – the violation of the tradition of primogeniture. The Chronicler (2 Chr 21:16-

22:1) also records that Ahaziah, who is described as his father's youngest son, gained the throne only after his brothers had been taken captive.

One Chronicler text is of particularly significance. It is an application of the primogeniture "law" of Deuteronomy. Reciting the causal clause, *tyvar awh-yk* (for he is the first fruit), and replacing the first fruit [*tyvar*] with the firstborn [*rkb*], Chronicler gives Jehoram's firstbornship as the reason for his succession to the throne of his father Jehoshaphat:

Jehoram's brothers, the sons of Jehoshaphat, were Azariah, Jehiel, Zechariah, Azariahu, Michael and Shephatiah. All these were sons of Jehoshaphat king of Israel. Their father had given them many gifts of silver and gold and articles of value, as well as fortified cities in Judah, but he had given the kingdom to Jehoram *because he was his firstborn son* [*rkbh awh-yk*] (2 Chr 21:3 NIV translation, emphasis and Hebrew phrase added).

Based on this textual evidence, we could conclude that primogeniture was generally practised in ancient Israel from the period of the patriarchs through monarchical to post-exilic periods.

*hrkbh j pvm*

In the Old Testament, a parallel text for the Deuteronomic primogeniture/birthright [*hrkbh*] is found only in one place (Gen 25:34). The Genesis text gives the impression that a birthright is saleable or transferable while the Deuteronomic text presents it otherwise (see below under the "ideological texture"). In Deuteronomy, "no whim of the father can set aside his eldest son's privileged position as the major heir to his father's estate. By virtue of his birth, the law guarantees him a set portion of the estate, which cannot be disposed of otherwise. The purpose of this right was probably as far as possible to keep family property intact in one holding" (Phillips 1973:141).

#### **4.3.2.3 Primogeniture in Deuteronomy 21:15-17 as a recitation and recontextualisation of collective memory**

Above we have shown hypothetically that substantial materials in Deuteronomy are a recitation and recontextualisation of materials in the Book of Covenant and that the Book of Covenant in turn recites and recontextualises the Ancient Near East law collections to suit its own belief and system. It must also be noted that written text was not the only way of transmission of information or traditions. Hence, the primogeniture instruction of Deuteronomy 21:15-17 could well be a recitation

and recontextualisation of what Brueggemann (2003:1-13) calls “imaginative remembering”<sup>65</sup> or what others refers to as “collective memory” of the Israelite society.

“Collective memory” may be defined not as a given but rather a socially constructed notion because it is presupposed that every collective memory requires the support of a group delimited in space and time. There are two types of collective memory. The first one is collective historical memory. This phenomenon is accessed through written records (also through sound and visual recording in the modern times). It is kept alive through commemorations and festive enactments. It is the way a society or a group represents past events – irrespective for the historical fidelity of this representation. Collective historical memory enables at least partial continuity. It also brings as new readings of the past in terms of the present. A society’s current perceived needs may impel it to refashion the past, but successive epochs are being kept alive through a common code and a common symbolic canon even amidst contemporary revisions. The second type of memory is called autobiographical memory, events that were personally experienced in the past and it tends to fade away unless it is regularly reinforced by individuals who shared personal experiences in the past. (cf. Bosman 2007 a-e and works cited there, especially Halbwachs, Coser, and Yadin).

Bosman (2007b):1-2, 7) discovers similarities between tradition history and the role memory plays in historiography. For this reason, he proposes that “collective memory” as a source of Scriptures needs to receive more scholarly attention.

In the past tradition history concentrated on conceptual trends in texts that can be linked to specific interest groups – i.e., priests, prophets, sages, etc – that gave rise to Priestly, prophetic and wisdom traditions. Collective memory studies complement this tradition historical approach by reflection on the “institutional memory” that lingered in the royal court, the temple, local sanctuaries and within the family... Besides history as a science concerned with the “objective” reflection on the past, there is also “lived history” that is discernable in annual religious festivals (Bosman (2007b):1-2, 7).

The above discussions suggest that, not only written documents, collective memories too preserve and transmit traditions. The tone of the primogeniture texts of the Old Testament suggests an existing collective memory of the custom.<sup>66</sup> From this tradition history or collective memory point

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<sup>65</sup> For Brueggemann (2003:7, his emphasis), the “interplay of *historical reportage* and *canonical formation*” in the Old Testament is a complex one. Asserting this interplay as the “*work of tradition*” Brueggemann (2003:7) terms the “defining enterprise of biblical formation, transmission, and interpretation” as “imaginative remembering”, which “remembering part is done in the intergenerational community, as parents tell and retell to children and grandchildren what is most prized in community lore” (cf. Exod 10:1-2; 12:26; 13:8, 14; Deut 6:20; Jos 4:21; Ps 78:8-5).

<sup>66</sup> See also Snyman (2007:55) who pleads that the collective memory of apartheid is part of the hermeneutical framework in reading the Bible in South Africa. Snyman’s brave approach is laudable. However, in this researcher’s opinion, on the one hand collective memory could help us learn both positive and negative lessons from the past, but on

of view, the question of whether Deuteronomy corrects narratives' violation of primogeniture or narratives violate the Deuteronomic law of primogeniture is thus irrelevant. Narratives' displacement of the firstborn would still violate the tradition or "collective memory" of primogeniture even if it is not reaffirmed in Deuteronomy.

### 4.3.3 Reconfiguration

Reconfiguration is recounting a situation in a manner that makes the later event "new" in relation to a previous event. Because the new event is similar to a previous event, the new event replaces or "outshines" the previous event, making the previous event a "foreshadowing" of the more recent one (Robbins 1996b:50).

We have studied in Chapters Two and Three above that primogeniture was a generally accepted and practised custom in the Ancient Near East and ancient Israel. However, fathers in both societies had been violating this custom. Firstborns were displaced in favour of younger sons. Especially the firstborn who was the son of the less favoured wife was usually displaced in favour of the younger son of the favourite wife. Deuteronomy 21:15-17 reconfigures this by promulgating it not exactly as a new instruction, but as a renewal and reaffirmation of the existing instruction. From now onwards an Israelite father will not have any right whatsoever to displace his firstborn son in favour of any of the younger sons (cf. Christensen 2002:478; Crüsemann 1992:256-257; Tsevat 1975:125-127). The right of the firstborn belongs to the actual firstborn; "no whim of the father can set aside his eldest son's privileged position as the major heir to this father's estate" (Phillips 1973:141).

### 4.3.4 Narrative amplification and/or thematic elaboration

This oral-scribal narrative amplification texture is produced by the extended composition containing recitation, recontextualisation, and reconfiguration. An alternative to the narrative amplification is thematic elaboration, which major topics and figures include rationale, argument from the opposite, analogy, example, and authoritative testimony (Robbins 1996b:51). Somewhere in the line of the seven part arguments discussed under the argumentative inner texture above, *Rhetorica ad Herennium* (Cicero 2.18.28-19:30; quoted in Robbins 1996b:53) presents the following example of an elaboration that sets forth a complete argument:

The most complete and perfect argument, then, is that which is comprised of five parts: the Proposition, the Reason, the Proof of the Reason, the Embellishment, and the Résumé. Through the Proposition we set forth summarily what we intend to prove. The Reason, by means of a brief explanation subjoined, sets forth the

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the other, the interest of a harmonious societal relationship would be better served by the collective forgetting of some of the past evil systems, such as slavery, colonialism, holocaust, segregation, genocide, apartheid, etc.

causal basis for the Proposition, establishing the truth of what we are urging. The Proof of Reason corroborates, by means of additional arguments, the briefly presented Reason. Embellishment we use in order to adorn and enrich the argument, after the proof has been established. The Résumé is a brief conclusion, drawing together the parts of the argument.

There are four major “argumentative figures” rhetoricians have identified: argument from the opposite or contrary, argument from analogy, argument from example, and argument from ancient testimony. Thus, one could develop a complete thematic elaboration for Deuteronomy 21:15-17 as follows:

*Praise:* Moses was a man Yahweh spoke with face to face (Num 12:8).

*Chreia:*<sup>67</sup> These are the words which Moses spoke to all Israel (Deut 1:1)... Moses began to expound this instruction, saying (1:5): “... If a man has two wives, one loved and the other hated, and both the loved and the hated bear him sons, but the firstborn is the son of the hated wife; when he divides up his estate and gives as inheritance to his sons, he is not allowed to make the son of the beloved wife the firstborn above the son of the hated wife who is the actual firstborn. Instead, he must recognise the actual firstborn, the son of the hated wife, and give him two-thirds of all he possesses, for he is the first fruit of his procreative seed; the office of primogeniture belongs to him ...” (21:15-17).

*Theme:* The right of the firstborn belongs to the actual firstborn [hrkbh j pvm rkbhl ] (17d).

*Rationale:* Because the firstborn is the first fruit of his father’s procreative strength/seed [wma tyvar awh-yk] (17c). The purpose clause yk (for/because) is the key word here.

*Confirmation of the rationale:* Original readers of the text seemed to have understood the rationale behind the significance of the firstborn. As noted earlier in the inner texture, the Hebrew nominal wma means generative power and sexual virility (Gen 49:3; Deut 21:17; see also Ps 78:51; 105:36) as well as physical strength (Job 18:7; 40:16; Prov 11:7; Isa 40:26, 29; Hos 12:3[4]), and wealth (Job 20:10; Hos 12:8 [9]). The Deuteronomic text seems to have aptly suggested all the three meanings of generative power/sexual virility, physical strength, and wealth. Physically healthy and strong men will have sexual virility. This will enable them to have children, especially the firstborn son, who would continue the name, security and thus wealth of the family. According to Wakely

<sup>67</sup> Chreia is a rhetorical method especially applicable to and used in the New Testament. It is applied here in the Old Testament with reservation. Deuteronomy 21:15-17 forms a part of a long chreia (speech attributed to Moses).

(1997:315-321), “it was in the firstborn that a father's undiluted, manly vigour... was manifested... Reuben had this vitality in such abundance that it manifested itself in the transgression of his father's marriage rights (Gen 35:22).” From this “undiluted” semen perspective, the firstborn must be both the first child of his father and mother. But as noted earlier (inner texture), if we take this as the only viable interpretation, a man with many sons would end up having no firstborn son. Thus alternative interpretation must be sought. If there is no firstborn son who is the first fruit of his father and the opener of his mother’s womb, then the oldest son is to be regarded as the firstborn.

*Argument from the contrary:* If a father makes the younger son, who is the son of his beloved wife, the first born ahead of his actual firstborn, who is the son of his hated wife, the actual firstborn and his mother would then be shamed, and thus there would be strife in the family (assumed from vv 15-16). This will also mean the violation of a stipulation of the covenant, which result in invoking curse (assumed from blessing and curse clauses of the covenant discussed above).

*Argument from ancient testimony:* For order and harmony, primogeniture has been a generally accepted tradition both in Israel and its counterpart Ancient Near East societies. Primogeniture thus serves as a cornerstone of the patriarchal family for its continual survival and continual holding of the inalienable family land (assumed from verses 16a and 17d).

*Argument from example:* Because the right of the firstborn was taken from Ishmael and given to Isaac, the younger son, there has been a never-ending enmity between the descendents of Ishmael and Isaac. In the same way, the Edomites and Israelites were always confrontational as a result of Jacob’s removal of Esau’s birthright (assumed from vv 15-16b).

*Argument from analogy:* As plant and animal first fruits are significant as the hope and opener of the future, so is the human firstborn; he is the hope and opener of the future of the family (assumed from v 17c).

*Synthesis of the argument:* Therefore, the actual firstborn must be acknowledged and accorded him the prime heir and successor of his father. In so doing, he must be given a two-thirds portion inheritance from his father’s estate (v.17, cf. 2 Ki 2:9).

*Conclusion:* The firstborn is the first fruit of his father’s procreative strength. Therefore, the right of the firstborn belongs to him regardless of circumstances and situations except in the case of the firstborn committing grave offences (vv 18-21). Even if the actual firstborn son is the son of the

hated wife or a slave wife/concubine (vv. 15d, 17, 10-14), the right of the firstborn still belongs to this actual firstborn son.

#### **4.3.5 Cultural and social intertexture**

Although Robbins (1996b:3) warns that the cultural and social intertextures should not be confused with social and cultural textures, terminology similarity defies the warning. Therefore, we shall combine our analysis of these (cultural and social) intertextures with the social and cultural texture below.

#### **4.3.6 Historical intertexture**

Integrating social (which includes political and economic) and cultural phenomena with historical events, Robbins' (1996b:63) uses the term "historical" to refer to events, which interpretation "requires knowledge of social, cultural, and ideological phenomena operative in it." Attention is given to both the multiplicity of the data and nature of the data. In so doing, Robbins asks the following questions in his analysis of the multiplicity of data: (a) Is this the only information about an event, that is, is this the only existing data to support a claim that this event occurred? What is the place of faith concerning the reliability of the information in a situation where there is no other independent confirmation of the event? (b) If there are some other accounts of the event, do all the accounts of an event that exist appear to be dependent on one another? Does it mean that there are no clearly "independent" accounts of the same event, which means all of the information comes from a "common" source? (c) Do the independent accounts agree on the basic issues? Or (d) do they contain significant disagreements?

The spectrum of data needs to be taken into consideration in analysing the nature of data thus includes historical inscriptions, records, annals, and so on, and literary discourse (literary narration, epistolary discourse, and speech of a character in a narrative). In analysing the historical intertexture of people, places, institutions, events, and customs, one needs to underline whether these phenomena have positive evidence outside of the Old Testament (Israel), Jewish (Rabbinic literature), and Christian (New Testament) sources or not. A question must also be asked whether the reported event is historically plausible or not (Robbins 1996b:63-70).

#### 4.3.6.1 Event in Deuteronomy 21:15-17

Deuteronomy 21:15-17 is an instruction concerning the rights and privileges of the firstborn that must be observed in the Promised Land. As such, there is no narrative event taking place in the text itself except that it is as an integral part of Moses' final instructions in the plain of Moab, which in turn is a part of the great Exodus event. There Moses, standing at the other (East) side of Jordan overlooking the Promised Land (Deut 1:1-2, 5) which he himself would never enter (Num 27:12-14), expounded the Torah (instruction) including the present primogeniture instructions (cf. Deut 1:1, 5).

#### 4.3.6.2 Nature of the data of event

##### *People, places, and institution*

##### *A. Positive evidence outside of the Old Testament, Jewish, and Christian sources:*

The twelfth-century BCE Pharaoh Merneptah's stela mentions a people group called Hapiru, probably a variant of Hebrew. Patriarchy, polygamy, sibling rivalry, succession strife, the significance of the firstborn, and the rule and practice of primogeniture are attested in the Ancient Near East texts (see Chapter Two).

##### *B. No evidence outside of the Old Testament, Jewish, and Christian sources:*

There is no evidence of a person/leader named Moses outside of biblical texts (Bosman 1997e:1), not even as an adopted prince of Egypt.

##### *Events*

##### *A. Positive evidence outside of the Old Testament, Jewish, and Christian sources:*

The primogeniture instruction is a part of God's instructions which Moses recited and expounded. The giving (writing) of the law by God himself is also attested in the Ancient Near East law collections (see Chapter Two).

##### *B. No evidence outside of the Old Testament, Jewish, and Christian sources:*

There is no extra-biblical evidence of mass Exodus from Egypt, the wilderness wandering, the giving of the law, and the occupation of the land.

### *C. Historically implausible*

Deuteronomy 21:15-17 is a part of the Pentateuch whose authorship is traditionally attributed to Moses. As highlighted above, for all the materials in the Pentateuch to have been written by Moses is historically implausible. Events in the Exodus and wilderness wandering, such as the burning bush event, plagues on the Egyptians, the crossing of the sea on a dry ground, manna and quail, pillars of cloud, more than two million people travelling together (650,000 fighting men and their family members at the rate of three to five members per family), God himself writing the ten commandment on the tablets (Exod 24:12; 34:1ff) are historically implausible. But that does not mean that they did not happen. These were supernatural phenomena wrought by the supernatural God. It takes trust and faith to believe since there is no other independent (external) confirmation of these events.

### *Customs*

#### *A. Positive evidence outside of the Old Testament, Jewish, and Christian sources:*

Customs of patriarchy; polygamous marriage; honour and shame culture;<sup>68</sup> the significance and sanctity of the firstborn/first fruit/firstling; the inalienability of the family land and division of it as inheritance among sons; the custom of primogeniture and the process or ritual of making the firstborn the successor of the family or the throne; rivalry and strife in the family; violation of primogeniture tradition; and events of customary court cases relating to inheritance and succession are well attested in the Ancient Near East texts (see Chapter Two).

#### *B. No evidence outside of the Old Testament, Jewish, and Christian sources:*

The custom of the significance and sanctity of the firstborn *because* he is the *ראשית* (first fruit/beginning of his father's vigour/sexual virility (undiluted semen) and the opener of his mother's womb (the emphasis of virginity) seems to be unique to the Old Testament.

### *C. Historically implausible*

The concept of the firstborn being the first fruit of the undiluted semen of the father and the opener of his mother's womb gives the impression that both the husband and the wife were virgins before they were married. The social custom of ancient Israel cherished chastity and virginity. But due to a lack of scientific medical testing facility for the wife's virginity (but how does one test a man's

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<sup>68</sup> For instance, in the present text, trauma and shame of childlessness and so celebrations associated with childbearing and giving birth; shame for the firstborn and his mother if he is displaced, honour for him and his mother if he is recognised, honour for a younger son who would be made the firstborn, etc.

virginity) in ancient Israel, unless one honestly and sincerely confessed and confirmed, it would be very difficult to ascertain the virginity claim unless the ordeals or Urim and Thumim were used and trusted.

#### **4.3.7 Summary observations on intertexture**

Above we have analysed the intertexture pattern of Deuteronomy 21:15-17. Like in the inner texture, the prerogatives of the firstborn and the affirmation and preservation of the office of primogeniture are the overlapping and interfacing motifs among the sub-textures of the intertexture. In the oral-scribal intertexture, we gave particular attention to our primary texts and the “legal” materials of Deuteronomy’s recitation and reconstruction of the Covenant Code which in turn recites and recontextualises the Ancient Near East law collections. We also discussed the text’s recitation and recontextualisation of other texts as well as oral traditions or collective memories, especially the recitation and recontextualisation of polygamous marriage which resulted in one of the wives being more favoured than the other wife/wives. This causes family strife. We also noted Deuteronomy 21:15-17’s recitation of other texts concerning the inalienability and division of the family land among sons, the significance of the firstborn, the rights of the firstborn, and the violation of the rule of primogeniture by fathers, etc. The text also reconfigured the past practice of making a younger son the firstborn in place of the actual firstborn by abolishing it as well as thematically elaborated the significance of the firstborn and the importance of the preservation of the office of primogeniture. The positive external evidence or lack of evidence and the historical plausibility of people, places, institutions; events; and customs surrounding Deuteronomy 21:15-17 and related texts were discussed under the historical intertexture.

The inner texture study of Deuteronomy 21:15-17 indicates that the writer and audience of the text understood primogeniture as a generally accepted and practised tradition of Israel. This position is supported by the intertexture evidence. In so doing, as several texts cited in Chapters Two, Three, and the present chapter indicate, the Deuteronomistic texts and Ancient Near East law collections emphasize more on the prerogatives of the firstborn son in family inheritance and royal succession (civil), while the Priestly texts concentrate more on the religious (cultic) significance of the firstborn.

Brin (1994:166) rightly asserts that “the subject of the first-born is a central one in biblical literature, expressed in a variety of aspects: social, legal, religious and others.” In the following, we shall continue to discuss the social aspect of the firstborn (including marriage and family,

genealogies, etc) under the “Social and Cultural Texture”; legal or civil aspect (primogeniture) under the “Ideological Texture”; and religious aspect (including the sanctity and sacrifice of the firstborn/firstfruit/firstling) under the “Sacred/Theological Texture.” Narrative texts that report the violation of the contemporary primogeniture tradition through the alleged divine legitimation will also be discussed under the “ideological texture”, as these texts and Deuteronomy 21:15-17 have ideological links. We will now turn to the study of the significance, rights and responsibilities of the firstborn in the patriarchal family as social phenomena by analysing the social and cultural texture of Deuteronomy 21:15-17.

## **4.4 SOCIAL AND CULTURAL TEXTURE OF DEUTERONOMY 21:15-17**

### **4.4.1 Introductory observations**

Analysis of the social and cultural texture of a text takes interpreters into sociological and anthropological theory... What kind of a social and cultural person would anyone be who lives in the “world” of a particular text? Investigation of the social cultural texture of a text includes exploring the social and cultural “location” of the language and the type of social and cultural world the language evokes or creates (Robbins 1996b:71).

We have noted in our intertexture analysis above that we will submerge the cultural and social intertexture with the present social and cultural texture, as there are inevitable interplays of the two. Thus it is important first to briefly analyse what Robbins terms as cultural reference, allusion, and echo, including social roles, social institutions, social codes, and social relationships that the text invokes in his cultural and social intertexture section.

### **4.4.2 Cultural reference, cultural allusion, cultural echo, social roles, social institutions, social codes, and social relationships in Deuteronomy 21:15-17**

#### **4.4.2.1 Cultural reference and allusion**

According to Robbins (1996b:58):

Cultural knowledge is ‘insider’ knowledge. This kind of knowledge is known only by people inside a particular culture or by people who have learned about that culture through some kind of interaction with – either variously in a context of education or in a context of direct interaction with members of it. Cultural intertexture appears in word and concept patterns and configurations, values, scripts, codes, or systems (e.g., purity, law, covenant); and myths (e.g., wisdom)... in a text either through reference or allusion and echo.

Furthermore, Robbins (1996b:58; emphasis his) defines reference and allusion thus:

A *reference* is a word or phrase that points to a personage or tradition known to people on the basis of tradition” while “ *allusion* is a statement that presupposes a tradition that exists in textual form, but the text being interpreted is not attempting to ‘recite’ the text. With both reference and allusion, the text interacts with phrases, concept, and traditions that are ‘cultural’ possessions that anyone who knows a particular culture may use.

There are words, phrases, and nuances in Deuteronomy 21:15-17 which are difficult for outsiders to fully understand, but were referred to as being understood and accepted by the ancient Israelites. To refer to one of the two wives as *hamvvh* (the hated one) is rather strange, but in ancient Israel, it seemed to be quite a commonly used term (for discussion, see Tigay 1996:195 and n. 39).<sup>69</sup> The joy and pride of being able to bear/have children, even sons, against the experiences of shame and trauma of childlessness represent another phenomenon some modern people would find difficult to fully understand (see Janzen 1993:43). Although the significance and highly esteemed position of the firstborn is attested in the Ancient Near East societies, the Old Testament seems to be most explicit in describing the sanctity, significance, importance and prerogatives of the firstborn (Milgrom 1976:337-338; Brin 1994:170-179, 209-237). The text also alludes to the idiosyncratic culture of some fathers who make (younger) sons of favourite wives firstborns (Mendelsohn 1959:39-40). Read together with the Esau-Jacob narrative, this gives the impression that one’s birthright is transferable (see below). Based on the father giving his estate as inheritance to his sons, we could also glean the importance ancient Israelites placed on the inalienability of their family land (inheritance) and their attachment to it (see Chapter Three above; see also Van der Toorn 1991:206-235; Wright 1997:77; Bendor 1996:209-211). We also see the honour and shame culture at work in the text. The firstborn would be shamed if the younger son is considered “above his face,” but he would be honoured if he is acknowledged/recognised (see below). The present day reader can only imagine the meaning of the idiomatic expression of “two mouths” [~יִוּוּ יָפ] share of inheritance for the firstborn (see above).

#### 4.4.2.2 Cultural echo

An ‘echo’ is a word or phrase that evokes, or potentially evokes, a concept from cultural tradition. In other words, echo does not contain either a word or phrase that is ‘indisputably’ from only one cultural tradition.

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<sup>69</sup> As noted above, marriage of convenience in a polygamous marriage could be one of the reasons for a wife being hated. In Egypt, the secondary wife was called “the hated one”, *mšdđt* (Tigay 1996:382, n. 39). Could this Egyptian term have sprung from the perspective of the first (primary) wife who now find a rival in the secondary wife and so hates her? This was the case in the Marâ society. It was not the husband, but the first wife who usually hates the second wife and vice versa.

Echo is subtle and indirect. One person may hear it while another does not, and the speaker may or may not have directly intended the echo to be there. The result is that interpreters regularly will debate the presence or absence of a particular echo in the text under consideration (Robbins 1996b:60).

One could hear echoes of strife in a polygamous marriage and family, the existence of a universally accepted tradition of primogeniture, and the authority of the patriarch over his wives and children in the patriarchal family in Deuteronomy 21:15-17. More specifically, one could “hear” stories of the displacement of the firstborns by the younger sons influenced by their fathers’ feeling towards their mothers as the Abraham-Sarah (Isaac)-Hagar (Ishmael), Isaac (Esau)-Rebecca (Jacob), and Jacob-Leah (Reuben)-Rachel (Joseph) narratives echoing the text of Deuteronomy 21:15-17 (McConville 2002:330; Carmichael 1985:142-145). That is precisely the reason why some scholars argue that the law of Deuteronomy stops fathers’ violations of the tradition of primogeniture in the narratives.

As noted in Chapter Three, for Carmichael (1985:142-150), this very presence of echoes proves that the laws in Deuteronomy, including Deuteronomy 21:15-17, do not address actual problems in life, nor do these laws govern real life situations. They are pieces of literature that address situations in Israel’s (narratives) literature. The narrative moves from how Jacob “steals” the birthright from his elder brother Esau, with the connivance of his mother Rachel, to the punishment Esau’s offence of his parents of by marrying the Hittite wives (Gen 26:35; cf. the punishment of a rebellious son in Deut 21:18-21). Esau’s offence of his parents is made comparable to that of Reuben’s sin with his father’s concubines. Both of them lost their firstborn birthrights to their younger brothers (see also Christensen 2002:478-479 who analyses Carmichael 1985:142-150).

Carmichael (1982:520) then concludes that the:

...forging of a relationship between a law and a narrative is fairly commonplace in biblical literature, although the topic has received little or no satisfactory attention. Many narratives, especially in the Pentateuch, recount an incident which is followed by the giving of a law, or a series of laws, which in content is closely bound up with the substance of the narrative.

Although Carmichael’s (1974:139-140) reconstruct of the corresponding relationship between a law and a narrative is interesting and convincing in some cases, Mayes (1979:50) warns:

It would seem best to apply his approach more selectively, rather than as a general principle to show the gradual growth of the whole law corpus; that is, it may succeed in explaining the presence of certain individual laws... or perhaps even groups of laws in their present contexts. However, the differences in style and form in

the laws suggest that already existing laws and already existing arrangements of laws within collections have been incorporated by the author of the original Deuteronomy.<sup>70</sup>

For our present text, Carmichael seems to have a point. Although the Deuteronomic “law” prohibits a father from appointing one of his younger sons as the firstborn, there is no provision for punishment for violation of this “law.”

#### 4.4.2.3 Social roles, identities, institutions, codes, and relationships

As a visible behaviour and public material objects produced by other people, social knowledge is a commonly held phenomenon for all persons of a region, no matter what their particular “cultural” location may be; and it falls generally into four categories: *social role* (soldier, shepherd, slave, athlete) or *social identity* (Greek, Roman, Jew); *social institution* (empire, synagogue, trade workers’ association, household), *social code* (e.g., honour, hospitality), and *social relationship* (patron, friend, enemy, kin) (Robbins 1996b:62).

In Deuteronomy 21:15-17, *social roles* or identities appear with a free and landholding polygamous man [VJA] as the leader of his family; childbearing beloved wife [hbwha hva], probably a free woman; childbearing hated wife [hawmv hva] who could be a slave/captive wife of verses 10-14; sons [-ymb]; firstborn [rkb]; and judge or king (implied because the text is a part of the Deuteronomic Code). *Social institutions* appear as polygamous marriage and family [-yvi ytv vjal]<sup>71</sup> (a man has two wives) (cf. De Vaux 1961:24-26; Craigie 1976:282); patriarchal family (implied all over the text); the inalienable family land/inheritance [hl xii] and the rule of the division of inheritance (among sons, daughters excluded) with the prerogative right (office) of the firstborn [hrkb j pvm] (see Chapter Three; see also Van der Toorn 1991:206-235; Wright 1997:77; Bendor 1996:209-211); and temple or royal court (implied). *Social codes* appear in terms of honour and shame (see “honour and shame” below). The firstborn and his hated mother would be shamed if the

<sup>70</sup> According to Mayes (1979:48), the original materials of Deuteronomy includes: 4:45; 6:4-9, 20-24; 7:1-3, 6, 17-24; 8:7-11a, 12-14, 17-18a; 9:1-7a, 13-14, 26-29; 10:10-11; 12:13-15, 17-19 (20-28), 29-31; 13:1-18; 14:21; and nearly all 14:22-25:16, with the omission of some isolated Deuteronomistic and later additions. By “original Deuteronomy”, Mayes (1979:47) means “the form of the book as it existed prior to the first Deuteronomistic editing which incorporated it into the Deuteronomistic historical work.

<sup>71</sup> Unsurprisingly, the two wives are referred to as belonging to him [wl] that is, to the husband. Based on this and many other stereotypical references to wives in relation to their husbands, especially in the case of a wife who commits adultery, it seems to be a general consensus among scholars that wives were regarded as husband’s properties in ancient Israel. Although, there may be some truth in this assumption, in this researcher’s opinion, adultery on the part of the wife is taken more seriously (see below) than adultery committed by the husband (if the woman whom the husband had sexual intercourse with is not someone’s wife) because of the practice of polygamy as opposed to polyandry. For discussion on a wife not as her husband’s property, see King & Stager 2001:49 and literature cited there.

former is displaced by his father from his firstbornship (ascribed honour) with his younger son in honour of his favourite wife (acquired honour). A social code is also manifested in terms of paternal honour and authority (see below). *Social relationships* appear in the form of husband and wife (polygamous husband and his two wives); rivalry between the wives and their sons; the preferential treatment given to the favourite wife and her son by the husband and father; and kinship relationships (husband and wife, mothers and sons, step sons, father and sons, brothers) (see “marriage and family in ancient Israel” below).

Above we briefly analysed general cultural reference, cultural allusion, cultural echo, social role, social identity, social institution, social code, and social relationship in Deuteronomy 21:15-17. Our next task is to analyse specific social topics, common social and cultural topics, and final cultural categories of Deuteronomy 21:15-17.

### **4.4.3 Specific social topics**

According to Robbins (1996b:72), “texts with a substantive religious texture contain specific ways of talking about the world. The topics of interest and concern in any one religious text may establish a relation to the world significantly different from another text.” In so doing, each kind of social response in the New Testament appears as a type of social rhetoric, which are of seven types as follow: conversionist, revolutionist, introversionist, Gnostic-manipulationist, thaumaturgical, reformist, and utopian (Robbins 1996b:72-75 and works cited there especially Wilson and Wilde). Some of these rhetoric responses may have more relevance to Deuteronomy in general other than our text in particular, as we shall discuss in the following.

#### **4.4.3.1 Conversionist**

The conversionist response is characterized by a view that the world is corrupt because people are corrupt. If people can be changed, the world will be changed. Salvation is considered to be available not through objective agencies but only by a profound and supernaturally wrought transformation of the self. The world itself will not change, but the presence of a new subjective orientation to it will itself be salvation (Robbins 1996b:72).

Unlike other legal materials of the Pentateuch, “Deuteronomy is more hortatory – it is exhortation more than legislation – so that its provisions tend to be less technical or specific than other codes” (Dillard & Longman 1994:101). In so doing, Deuteronomy understands that, like other nations, the people of Israel too are naturally corrupt (Deut 6:10-12). The land of Canaan is represented as both

the Promised Land of blessing as well as the Canaanite snare of curse, that is, for the Deuteronomist, the land of Canaan is life as well as death. It is a land of God's promise where the covenant stipulations can be implemented, but it is also the home of nations whose practices can seduce the Israelites from their calling (Dearman 1992:125-126). In order to overcome this sinful and corruptible character, the Israelites must fear, love, and serve the Lord their God, keep his commandments, stipulations and decrees, do what is right, and above all, they must not follow the gods of the Canaanites and so become corrupted (Deut 6:13-19).

The book of Deuteronomy is a visionary book of a conversionist or "transformationist" (Dearman 1992:125-152). The Torah must be read publicly (Deut 31:9-13) as well as taught in the family, with the teaching responsibility placed solely on the father (Deut 6:6-25). This is peculiarly Deuteronomic. The book repeatedly "appeals to the hearts and memories of its hearers, setting before them the blessings of obedience to the covenant and the curses for disobedience, and urging Israel to choose life and not death" (Dearman 1992:125). The transformationist vision of Deuteronomy is vividly manifested in the last words of Moses:

Today I invoke heaven and earth as a witness against you that I have set life and death, blessing and curse, before you. Therefore choose life so that you and your descendants may live! I also call on you to love the Lord your God, to obey him and be loyal to him, for he gives you life and enables you to live continually in the land the Lord promised to give to your ancestors Abraham, Isaac, and Jacob" (Deut 30:19-20, NET Bible).

This transformation vision of choosing life must have been the basic inspiration throughout the rest of the Old Testament and New Testament books to recite and recontextualise the Deuteronomic instructions (cf. Kalland & Barker 1985:240).

Now returning to our primary text, the main rhetorical emphasis here is to save the firstborn, the son of the hated wife, from displacement by his own idiosyncratic father in favour of the son of the beloved wife. Deuteronomy stipulates that the actual firstborn must be recognised and be given his rightful position by giving him two-thirds of the estate as his inheritance. This primogeniture instruction is a part of the overall instructions of Deuteronomy, the obedience of which will result in blessings and the violation in curses that are spelled out in Deuteronomy 27-30 (see Dearman 1992:148-149 for comments). The rhetoric also alludes to common wives' and brothers' rivalries in a polygamous family, as well as the difficulties for a husband to have an equal relationship with all his wives if he has more than one wife. However, the text does not provide a remedy for these problems.

#### 4.4.3.2 Revolutionist

The revolutionist response declares that only the destruction of the world – the natural world but also, more specifically, the social order – will be sufficient to save people. Supernatural powers must perform the destruction because people lack the power if not to destroy the world then certainly to re-create. Believers may themselves feel called upon to participate in the process of overturning the world, but they know that they do no more than assist greater powers and give a testimony of faith by their words and deeds (Robbins 1996b:72-73).

Experiences surrounding the exile and how the Israelites responded to it in the Old Testament may be understood in terms of the revolutionist perspective defined above. From both the Deuteronomistic and Priestly perspectives, the destruction of Israel (both Northern and Southern kingdoms) and subsequent exile [חלג] <sup>72</sup> was God's punishment for Israel's sins. For the Deuteronomist, it was God himself who destroyed Israel and exiled its people so that he may recreate the land and the people. This intense feeling of guilt prevailed among the people in exile and it resulted in the people participating in the process of God's recreation by repenting and returning fervently to God as a condition of returning to the land (Hos 2:16-18; 3:5; 5:15-6:1; 14:2-9; Jer 29:13-14; 1 Ki 8:47-48; Lev 26:38-42, 44-45; Deut 4:24-31; 28; 30:1-5; Neh 1:8-11). They then knew that "Israel should not and cannot live like other nations. The reform is not a desperate moment of parochialism but an attempt to order life, community, and land in covenantal ways and to avoid the Syro-Hittite alternative which denies Israel's holy destiny" (Brueggemann 1977:158).

Clines (1978:73-76) discovers a pattern of creation-uncreation-recreation in Genesis chapters 1-11. In the same vein, Hamilton (1996:664) asserts that if Genesis chapters 1-2 "represents the creation aspect of this pattern, then chapters 3-6 is the story of humankind's undoing of creation, as a result of which God removes the fixed boundaries in chapter 1 in order to allow the waters to flood the earth. The Flood can be restrained only by the reimposition of boundaries." Brueggemann (1977:122) refers to the Book of Jeremiah as a "theology of exile" which asserts radical loss and discontinuity (un-creation) as a source for real newness (recreation). For Brueggemann (1977:122), this is "the central scandal of the Bible." There is no more radical text than the parable of Jeremiah

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<sup>72</sup> חלג is the Hebrew word most commonly used for exile (cf. Amos 1:5; 5:5; 7:11-17; Hos 10:5 alluding to 1 Sa 4:21-22; Jer 5:9, 29; 9:9; 25:12; 29:10; Ezek 39:23; 2 Ki 15:29; 17:6, 23; 24:14; 25:11). Its simple meaning is 'to uncover' (cf. Prov 20:19; Est 3:14; Num 24:42; Ps 119:18; Dan 2:22). It also means to depart, go away. For example, in 1 Samuel 4:21-22, the expression, "the glory has departed" describes the capture of the Ark of the Covenant. In the same way, the exile has uncovered the Promised Land and its people; the glory of the land has departed (Mic 1:16; Est 2:6; Zech 6:10; Isa 45:13; Jer 25:5; see also Ross 1997:595-601).

24 where the Lord who gave the land to the Israelites is announcing now that landlessness is the way of the future, for newness comes in discontinuity to those who have no claim (Jer 29:5-7).

With regard to the violation of the primogeniture stipulation by fathers, although it is not specifically mentioned as one of the reasons for the destruction and exile, these idiosyncratic behaviors on the part of some Israelite fathers are indicative of society's ills.<sup>73</sup> Experiences before, during, and after the divinely wrought exile would bring newness to the people of Israel.<sup>74</sup> Deuteronomy 30:1-10 probably belongs to the exilic circles, responsible for the final form of the book. According to this text, exile will bring a future transformation for the Israelites. Yahweh will circumcise their hearts and bring the exiles back to the Promised Land so that they will be able to love Yahweh wholeheartedly and live obediently in the Promised Land (Dearman 1992:152, n. 86).

#### 4.4.3.3 Introversionist

The introversionist response views the world as irredeemably evil and considers salvation to be attainable only by the fullest possible withdrawal from it. The self may be purified by renouncing the world and leaving it. This might be an individual response, of course, but as the response of a social movement it leads to the establishment of a separated community preoccupied with its own holiness and its means of insulation from the wider society (Robbins 1996b:73).

Deuteronomy gives the irredeemable sin of the Canaanites as a reason for their destruction by God (Deut 9:1-5; cf Gen 15:12-16). Instructions in Deuteronomy are, therefore, a warning not to follow

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<sup>73</sup> In addition to the general condemnation of violation of God's commandments, the Old Testament mentions some specific violations. From the Priestly perspective, among others, it includes the transgression of the laws of the sabbatical and jubilee years; falling into idolatry; practicing intermarriage with unbelieving foreigners (Ezr 9:11-14; Neh 9:2); and becoming slack in Sabbath observance cf. (Jer 17:21-27; Ezek 20:12-13, 20-21; Isa 56:1-8; 58:13-14; Neh 10:32; 13:17-18). From the Deuteronomistic perspective, it is their failure to follow the path of justice and righteousness (cf. Amos 5:24-27; 6:6-7; Isa 5:12-13; Mic 3:9-12; Jer 7:5-15; 21:12-14; 22:3-5). In addition, the Priestly sources, which emphasise God's presence in the land of Israel and, therefore, obligates the observance of the laws of holiness and purity, speaks of fornication and incest as acts that had defiled the land (Lev 18:24 ff). The shedding of blood, adultery, theft, taking a false oath, and dishonesty are also listed among broken stipulations. These sins would also result in the curse of dryness that would in turn result in the land not yielding its produce (Num 35: 33-34; Lev 26:20-22; 2 Sam 1:21-22; Hos 4:2-3; Isa 24:4 ff; 33:8 ff). See Weinfeld (1993:199).

<sup>74</sup> The exile was a time of the best story telling and collection in Israel's history, with the barren giving birth to the child of promise as its central motif, that is, to the one without future or hope (Jer 29:14) is given the impossible blessing (Gen 11:30; 18:9-15; 25:21; 29:31). The second Isaiah announced the 'not pitied' (Hos 1:6) and 'not comforted' (Lam 1:2, 9, 17, 21) Israel as comforted again (Isa 40:9-10; 41:17-19; 44:26-28; 45:1-7) because their God reigned (52:7). If the Lord reigns, that means the end of exile (homelessness), because he is a God who forgives and wills land for his people (47:1-5; 49:7-13; 51:2-3; 54:1-3; 9-10, 13,17; 55:3; cf 2 Sa 7; Hos 2:21-23; 10:12). The creation of order out of chaos (Genesis 1:1-2:4a) is the central theme of the exilic Priestly Writings (cf Gen 1:1-2:4a), the emphasis of a new history of order in the land in contrast to formlessness and void and darkness before and during exile. The same words *ḥtō* (formless/void) in 1:2 are used by Isaiah (45:18-19; cf. Jer 4:23) to refer to the chaotic situation of the pre-exilic and exilic Israel in contrast to a future hope of order form and newness (cf. Brueggemann 1977:120 ).

the ways of the Canaanites, but the ways of Yahweh. The Priestly writer puts it in no uncertain terms:

But you must keep my decrees and my laws. The native-born and the aliens living among you must not do any of these detestable things, for all these things were done by the people who lived in the land before you, and the land became defiled. And if you defile the land, it will vomit you out as it vomited out the nations that were before you (Lev 18:26-28).

The author of Deuteronomy understands that an unbelieving foreign wife can corrupt her believing Israelite husband, like the case of Solomon, and so violates the first two commandments (Merrill 1994:180). Thus they need to separate themselves from the Canaanites. One of the areas in which they must separate themselves from the Canaanites is not to intermarry with them (Deut 7:3-4; cf 12:31; 18:9-14; 20:17-18; Num 25:1-3). The prohibition of intermarriage is extended to all non-Jews, not only the Canaanites, in the Halakhic exegesis, since all intermarriages carry the danger of apostasy (Tigay 1996:85). For the Priestly theologian, this intermarriage was one of the sins that defiled the land and as a result the people were exiled (Ezr 9:11-14; Neh 9:2).<sup>75</sup> Therefore, the prohibition of intermarriage in Deuteronomy and Ezra-Nehemiah is in every sense God's instruction for the Israelites to be intentionally separate and different from their neighbours so as to be a holy nation. Another area of separation is the rejection of syncretistic and polytheistic life of the native Canaanites (Deut 6:4; 7:1-6; 12:2-3; cf. Dearman 1992:142-144)

In Deuteronomy 21:15-17, an introversionist approach is found in terms of a primogeniture instruction. A Canaanite father may choose any of his sons to be his successor. Although the Ancient Near East law collections acknowledge the custom of primogeniture and thus provides some rules relating to it, the laws, however, do not explicitly prohibit a father from displacing his firstborn son in favour of his younger son, like the Deuteronomic Code does. Deuteronomy 21:15-17 explicitly prohibits a father from displacing his actual firstborn son in favour of his younger son. This is a call for an Israelite father to be different. He is not allowed to do what he wants, but to obey God's instruction. By virtue of being the first fruit of his father's procreative seed, the firstborn is significant (Milgrom 1976:338), and thus Israelite fathers must recognise their actual firstborns and make them their successors.

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<sup>75</sup> According to Judges 3:5-6, the Israelites did not eliminate all the Canaanites and did intermarry with them and worship their gods (Tigay 1996:85) which continued until Ezra's time. Joshua Gitay at the Old Testament Postgraduate Seminar on August 1, 2007 at Stellenbosch University said that the Israelites did not agree to Ezra's proposal of sending away their foreign wives, as it would mean separation of the families; so they reached a compromise: non-Jews spouses shall convert to Judaism. Craigie (1976:179) believes that the prohibition of intermarriage in Deuteronomy 7:3-4 has more to do with forging of political treaties by means of marriage. Somewhere on the line, McConville (2002:153) argues that the singular address in the prohibition as well as singulars "daughter ... son... daughter... son", evokes the marriage agreement between respective fathers the sequence of which is a powerful social bonding which will compromise the allegiance of the people to Yahweh (e.g., Solomon and Ahab in 1 Ki 11:3; 16:30-33).

#### 4.4.3.4 Manipulationist

The ... manipulationist response seeks only a transformed set of relationships – a transformed method of coping with evil. Whereas the foregoing orientations reject the goals of society as well as the institutionalized means of attaining them and the existing facilities by which people might be saved, the ... manipulationist rejects only the means and the facilities. Salvation is possible in the world, and evil may overcome if people learn the right means, improved techniques, to deal with their problems (Robbins 1996b:73).

Robbins (1996b:73) uses the hyphenated word, Gnostic-manipulationist. Since Gnosticism is primarily associated with the New Testament, we shall employ a single term “manipulation” for our approach to the Old Testament from this perspective. A manipulationist approach to the Old Testament would be the wisdom theological tradition. As noted in Chapter One, Wisdom makes a sound judgment and takes a correct attitude toward life and conduct. Order is projected as possible in family, society and nation if people so love wisdom. The function of wisdom [hmkx] is very close to the function of righteousness [qdc]. Truthfulness, fidelity, kindness, honesty and control of appetites are the recurring teachings in Proverbs and Ecclesiastes. Surprisingly, these elements of Wisdom literature are also found in Deuteronomy. The books of Job, Proverbs, Ecclesiastes [tlhq], a few Psalms of the Old Testament as well as two Apocryphal books (Wisdom of Ben Sirach or Ecclesiasticus and Wisdom of Solomon) are commonly classified as Wisdom literature.

However, Weinfeld (1972) finds wisdom elements in Deuteronomy as well. Based on the presence of wisdom substrata (the concept of wisdom, the contents of wisdom, and the fear of God), humanism, didacticism, and the doctrine of reward for doing good, Weinfeld (1972:244-319) proposes that Deuteronomy is the product of an ancient Israelite civil service interests, that is, the expression of a governmental group interested in shaping the structure and life of the nation.<sup>76</sup> This is evident in our text. In Deuteronomy 21:17a, the author employs the wisdom word רכיל. Fathers are commanded to רכיל their firstborns for inheritance and succession. The word has a connotation of the demand of a father’s intentional or willing recognition of his firstborn son (BDB 2000:647, “be willing to recognise”). The maximum use of its parallels are found in various usages in Wisdom literature (cf. Job 2:12, 4:16; 7:10; 21:29; 24:13; 24:17; 34:19, 25; Ps 103:16; 142:5; Prov 20:21; 24:23; 26:24; 28:21). Deuteronomy 21:15-17 instructs fathers not to be foolish or idiosyncratic, but wise. They should not allow their wives, even beloved ones, to influence them in the choice of their

<sup>76</sup> Examples of some of the principal parallels between the book of Deuteronomy and Israelite wisdom literature include: Deut 13:1; cf. Jer 26:2// Eccl 3:14; cf. Sir 18:6; 42:21; Deut 19:14, cf. 27:17//Prov 22:28; 23:10; Deut 25:13-16//Prov 11:1; 20:23; Deut 23:22-24//Eccl 5:1-5; Prov 20:25; cf. Sir 18:22; Deut 23:16//Prov 30:10; Deut 1:17; cf. 16:19//Prov 24:23b; cf. 28:21; Deut 16:20//Prov 21:21) (see Weinfeld 1972:260-264).

prime successors. They must return to their senses and recognise their actual firstborn sons. The reward of this would be order, peace, and harmony in the family.

#### **4.4.3.5 Thaumaturgical**

The thaumaturgical response focuses on the individual's concern for relief from present and specific ills by special dispensations. The request for supernatural help is personal and local, and its operation is magical. Salvation is immediate but has no general application beyond the given case and others like it. Salvation takes the form of healing, assuagement of grief, restoration after loss, reassurance, the foresight and avoidance of calamity, and the guarantee of eternal (or at least continuing) life after death (Robbins 1996b:73).

A thaumaturgical response for the Old Testament would be the Deuteronomistic theology of obedience to God's commandments which will lead to a reward of well-being – prosperity, posterity, health and long life. Deuteronomistic theology is also in line with the Wisdom understanding (theology) of life (Murphy 1985:3-11) which is manifested in terms of cause and effect – good people are blessed and bad people cursed (cf. Weinfeld 1972:244-281, 307-313). A thaumaturgical approach to the primogeniture text of Deuteronomy 21:15-17 will emphasise that obeying the commandments of the Lord including the primogeniture instructions will result in Yahweh's blessing for the well-being (prosperity, posterity, health and long life) for the members of the family which will in turn result in order, peace, and harmony in the family.

The Old Testament is not foreign to life after death. Psalms 16; 73; and Ps 49 portray communion with God beyond death. Daniel 12 speaks about the awakening of the righteous dead to eternal life. The last verse of Isaiah Isa 66 refers to the suffering of those who rebelled against God after they died. Obedience to or violation of the Torah would serve as the standard measurement for one's life after death – obedience to eternal life in communion with Yahweh and violation to Sheol (Dearman 1992:228-263 for the apocalyptic literature of the Old Testament). In the apocalyptic literature, salvation proclaimed by the prophets was not to be realised in history (Deist 1991:129).

#### **4.4.3.6 Reformist and utopian**

##### *Reformist:*

The reformist response views the world as corrupt because its social structures are corrupt. If the structures can be changed so that the behaviours they sanction are changed, then salvation will be present in the world. This response, then assumes that evil may be dealt with according to supernaturally given insights about the ways in which social organization should be amended. Investigation of the ways of the world and recommendations for

amending it are essential orientation. The specific alterations to be made are revealed to people whose hearts and minds are open to supernatural influence (Robbins 1996b:73).

### *Utopian:*

The utopian response seeks to reconstruct the entire social world according to divinely given principles, rather than simply to amend it from a reformist position. The goal of a utopian response is to establish a new social organization that will eliminate evil. It is much more radical than the reformist response because it insists on complete replacement of the present social organization. The utopian response differs from the revolutionist response by insisting that people themselves remake the world rather than that a divine power destroy this present world and re-create another. In turn, a utopian response is more active and constructive than an introversionist response of simply withdrawing from the world (Robbins 1996b:74).

Although Robbins (1996b:73-74) differentiates reformist and utopian responses, for the Old Testament, it is difficult to differentiate between the two. Thus we shall analyse them together under one hyphenated title – reformist-utopian. For Deuteronomy, this response is the heart of the matter. Deuteronomic legal instructions are about the establishment of a society which must be radically different from the surrounding nations. Perhaps the words of the Deuteronomistic theologian in Joshua 24:14-15 sums this up vividly: “... But as for me and my house, we will serve the Lord.” As a Yahweh serving house (nation), Israel is to be different from surrounding nations having different kind of kings (Deut 17:14-20), priests (18:1-13, especially vv 9-13), officials/judges (17:8-13), prophets (18:14-22), and people (16:21-17:7). Ezekiel thundered when he saw that the Israelite kings, priests, officials, prophets, including people themselves are no different from their surrounding nations in their corruption, defilement of the land, and failure to practice justice and righteousness (Ezek 22:23-31). Thus Dearman (1992:152) concludes: “Political ideology and utopian hope infuse Deuteronomy’s zeal for an Israel transformed by the Horeb covenant; it is a zeal for a covenant community dedicated exclusively to the service of Yahweh in the land of Canaan.”

#### **4.4.4 Common social and cultural topics**

Common social and cultural topics are the overall environment for the specific social topics in a text. Knowing the common social and cultural topics in a text can help an interpreter to avoid ethnocentric and anachronistic interpretation (Robbins 1996b:75).

Common social and cultural topics of the New Testament according to Robbins (1996b:76-86) are classified in to eight categories, namely, honour, guilt, and rights cultures; dyadic and individualist personalities; dyadic and legal contracts and agreements; challenge-response (riposte);

agriculturally based, industrial, and technological economic exchange systems; peasants, labourers, craftspeople, and entrepreneurs; limited, insufficient, and over-abundant goods; and finally, purity codes. In the following, we shall consider if some of these are relevant and applicable to Old Testament interpretation in general and our text in particular.

#### **4.4.4.1 Honour-shame and rights culture in the Old Testament (ancient Israel) and Deuteronomy 21:15-17**

Robbins (1996b:75-76) rightly points out that “one of the goals of social-scientific critics during the last two decades has been to show that both North American and European interpretations of the Bible are based on individualist, guilt-oriented values rather than group-oriented, honour-shame values characteristics of Mediterranean society.”<sup>77</sup> As a part of a larger Mediterranean world, honour and shame culture was also the core values in ancient Israel (and in the Old Testament) (Plevnik 2000:106-115). Honour and shame culture is at the centre of the common social and cultural topics which permeate all other sub-topics.

According to Malina (1981:27-28), honour is:

...social proper attitude and behaviour in the area where the three lines of power, sexual status, and religion intersect ... [I]t is the value of a person in his or her own eyes (that is, one’s claim to worth) plus that person’s value in the eyes of his or her social group... Honour is a claim to worth and the social acknowledgment of worth (see also Plevnik 2000:107).

Malina<sup>78</sup> (1981:44, 47) rightly differentiates between ‘to have shame’ and ‘to be shamed’. While the former is “a positive symbol, meaning sensitivity to one’s own reputation, sensitivity to the opinion of others” (Malina 1981:44), the latter is always negative; “it means to be denied or to be diminished in honour” (Plevnik 2000:107). From this perspective, “shame” refers to “a person’s sensibility about what others think, say, and do with regard to his or her honour” (Robbins

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<sup>77</sup> From this researcher’s experience, honour and shame culture was prevalent not only in the Mediterranean world, but also among traditional tribal societies in many parts of the world.

<sup>78</sup> Reading the Bible through the honour and shame culture of the Mediterranean was already advanced nearly five decades ago. Authorities on the study of honour and shame culture includes, among others, Peristiany (1966) and Pitt-Rivers (1968). Peristiany (1966:10) observes that “honor is at the apex of the pyramid of temporal social values and it conditions their hierarchical order. Cutting across all other social classifications it divides social beings into two fundamental categories, those endowed with honor and those deprived of it.” Pitt-Rivers (1968:503) defines honor in terms of both internal and external dimensions: “Honor is the value of a person in his own eyes, but also in the eyes of this society. It is his estimation of his own worth, his claim to pride, but it is also the acknowledgment of that claim, his excellence recognized by society, his right to pride.”

1996b:76). Honour is manifested in two ways – ascribed and acquired honours. Ascribed honour “befalls or happens to a person passively through birth, family connections, or endowment by notable persons of power” while acquired honour is one “actively sought and garnered most often at the expenses of one’s equals in the social contests of challenge and response” (Malina 1981:47). Ascribed honour through birth and family connections may be described as “rights” (Robbins 1996b:76). In this researcher’s opinion, acquired honour may be acquired not only at the expense of one’s equals, but also at the expense of one’s superiors. Honour and shame are thus two sides of the same coin – to honour someone means to protect his/her shame and to shame someone means to dishonour him/her. Honour and shame also has a male and female component. From a male perspective, maleness is regarded as honour while femaleness is taken as shame (Robbins 1996b:76). In sum, structures that determine one’s honour and shame include sex roles, power, sentiment, reputation, viewpoint, and socio-economic status (for further discussion on honour and shame and related values, see Pilch & Malina [eds] 2000).

In the Old Testament, Israel’s claim to honour [dbk]<sup>79</sup> as a nation is largely an ascribed honour based on its special relationship to the Lord as a chosen nation which means that God is on the side of Israel (Isa 43:1-7; Ps 44:1-8; cf. Plevnik 2000:108). National destruction and subsequent exile was thus a shame [vwb]<sup>80</sup> for Israel. On the one hand, the Israelites took it as a sign of God’s abandonment because of their disobedience, but on the other they feared that the victors will mock (shame) their God as a God who is powerless to save them (Ps 44; 69; 109:28-29:17-22; Isa 2:6-3:26; 59:1-19; Jeremiah 13:26-27; 23:40; 51:51; Ezek 16:36-54; Hos 2:10; Nah 3:5; cf. Plevnik 2000:108-110). Thus for the second Isaiah, the return from exile was the healing of Israel’s shame:

Do not be afraid; you will not suffer shame. Do not fear disgrace; you will not be humiliated. You will forget the shame of your youth and remember no more the reproach of your widowhood (Isaiah 54:4; see also 61:7).

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<sup>79</sup> **dbk** is the most common Hebrew word for honour (Qal: to honour; Niphal: to be honoured; nominal: honour, reverence). Other Hebrew words used for honour include: **rdh** (honour, adorn; nominal: adornment, splendour, majesty) **lbz** (exalt, honour; nominal: exalted, magnificent), **rqy** (honour, riches, respect, price, splendour), **xbv** (commend, praise, honour).

<sup>80</sup> **vwb** is the most common Hebrew word for shame (Qal: be ashamed, put to shame, behave shamefully; Hiphil: to cause shame or disgrace, behave shamefully; nominal **hvwb**, **hivb**, **tvb** (shame, shamefulness, disgrace). Other Hebrew words used for shame, disgrace, humiliation, scorn include: **zwb** (show contempt for, contempt, laughing stock, **dsx** (insult, reproach), **rpX** (be dismayed, feel ashamed), **@rX** (taunt, mock, insult, defy, **~lk** (be shamed, humiliated, hurt), **q[l** (scorn, mock), **#an** (reject, disdain, treat disrespectfully), **!wl qyq** (disgrace), **hl q** (be of low esteem, treat with contempt, dishonour, detest) **!wl q** (shame, dishonour, contempt).

On a personal level, the righteous person's claim to honour is evidence of special relationship with God because of reliance on God's help (Ps 54:55). God's punishment for one's enemies is likewise evidence of honour because of a special relationship with God (Ps 35:4; 69; 70:2; 71:13; 88:16-17; cf. Plevnik 2000:108-109). In extreme cases we see how people would rather die than be dishonoured or shamed. We read in 2 Samuel 17:1-23 that Ahithophel committed suicide when his advice was rejected – he was shamed and humiliated. On the family level, children are expected to honour their parents (Exod 20:12; 21:15, 17; Deut 5:16; 21:18-21; 27:16; Prov 19:16; 20:20; 28:24) and an individual member's deviation from corporate family values are regarded as shaming the entire family (King and Stager 2001:42; Blenkinsopp 1997:83-84).

There are elements honour and shame at work in Deuteronomy 21:15-17. Receiving the prime heirship by virtue of one's firstbornship is an honour to the firstborn. The command given to the father to  $\Gamma\kappa\iota$  his firstborn has loaded meaning of willing acknowledgment with honour (BDB 2000:647). The rhetoric of the text presents a scenario of battle between the ascribed and acquired honours for the heirship. The two-third portion inheritance or prime heirship is the right (birthright) of the firstborn. This is his ascribed honour through his birth. But the honour of the prime-heirship could be taken by a younger son, most probably the son of the beloved wife. If he does, his would be acquired honour. The shame of taking away one's ascribed honour would be much greater than one's failure to attain an acquired honour. Thus the one who would be greatly shamed in our text is the firstborn and his hated mother if his birthright is taken away from him. As noted above, the Hebrew phrase,  $\text{יָמֵי-לִי}$  [ (above the face of ...), has a connotation of honour and shame. Honour simply means saving one's face and shame losing face.<sup>81</sup>

By taking away the firstborn's ascribed honour and giving it to his younger brother, the former would have been greatly shamed. Shaming someone can result in a devastating effect on the shamed one and his or her surroundings. We have earlier mentioned the example of Ahithophel. In our present text, shaming of the firstborn would affect the wellbeing of the firstborn himself as well as

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<sup>81</sup> In Marâ language, to make someone lose his or her face is called "*hmia pachhie*", meaning making one's face become bad. The great importance of face (saving) in Asia and Africa even today is what many Westerners often fail to understand or comprehend. Honour killings that we heard from time to time, especially from the Middle East, is a horrible thing. At the same time, one must not forget the positive contributions that the cultures of honour and shame make for the betterment of the society. For example, divorce is a shameful act and being a divorcee is a shame in the Marâ society. This (face saving) is one of the reasons why there is almost zero rate of divorce in the Marâ society even today. A concern for children and relationship break between the two families (of the husband and wife) is of course a strong reason for couples consciously choosing to remain married. But for many, to save one's face from the shame of being a divorcee would be an equal reason to remain married. But suffice to say that shamelessness is invading the Marâ society as well. On this, one late pastor once lamented: "Our young generation is being possessed by the spirit of shamelessness."

his relationship with his father, younger brother who replaced him, and the overall peace and harmony of the *ba tyb*. Thus the rhetoric warns a father not to shame his firstborn by using the phrase, *mp-l* [, with a negative command of *al* .

In addition to protecting the firstborn from being shamed, there are at least two other implications of shame in our text. Childlessness was a shame and so was Sarah and Rachel's inability to bear children a cause for shame (Janzen 1993:43). Since both the wives had given birth, this saved the wives and their husband from this shame. Being hated or unloved was also a shame. The hated wife would have gone through a double shame if her son, the actual firstborn of his father, were displaced in favour of a younger son, the son of the beloved wife.

#### 4.4.4.2 Dyadic and individualist personalities

A dyadic personality is one who needs another person continually in order to know who he or she really is. Such persons internalize and make their own what others say, do, and think about them, because they believe it is necessary, for being human, to live out the expectations of others... Modern individualism leads us to perceive ourselves as unique because we are set apart from other unique and set-apart beings. In contrast, a first-century person perceived himself or herself as a distinctive whole set in relation to other such wholes and set within a given social and natural background. Every individual was perceived as embedded in other individuals, in a sequence of embeddedness (Robbins 1996b:77-78).

This common social and cultural topic is very close to the first topic, honour-shame and rights cultures, discussed above, as one is either honoured or shamed in terms of his or her relation to others in the society. What Robbins seems to have failed to understand, though, is that this dyadic personality is not a matter of antiquity. It is alive and functioning in many modern societies today, especially in Asia and Africa. This is basically the reason why John Mbiti, a renowned African scholar, asserts that he is who he is because of whom they are as a community (Mbiti 1969:8). For the Israelites, their land is God's collective gift to them and the passing down of the prime heir-ship (to inherit prime family land and to succeed the father as the head of the family) to the firstborn is not a matter of individual family affairs; it is their shared national destiny. For this reason, the lawgiver has every right to legislate the family inheritance and succession rules.

“What would people (society) think or say if I do or don't do this” is a driving force of oriental social behaviour, for example, the Marâ people. However, unlike their counterpart other orientals, the concern of “what would people (society) think or say if I violate the tradition of primogeniture?”

does not seem to have bothered these idiosyncratic Israelite father who displaced his firstborn in favour of his younger son of his beloved wife. The lawgiver asserts here that such behaviour is contrary to their cherished dyadic culture, one must be concerned about and sensitive to the commonly accepted and practised tradition of the society. Conversely, the rhetoric here seems to imply that since one's firstbornship is not an acquired honour but ascribed one, the firstborn in question does not need the approval of others, in this case his father, in order to be accorded his inheritance and succession rights. Regardless of whether his father likes him or not, he is the firstborn, the rightful prime heir and successor.

#### **4.4.4.3 Dyadic and legal contracts and agreements**

A dyadic contract is an implicit agreement informally binding pairs of contractants rather than groups. It is based on the informal principle of reciprocity... function side by side with the formal contracts of society like buying and selling, marriage, and natural covenant with God (Robbins 1996b:79).

##### ***Dyadic contracts***

Although a dyadic contractual culture was not foreign to the Israelites, there is no explicit evidence of it in our present text either in terms of a *colleague contract* ("reciprocity among equals") or *patron-client* contract ("initiated by means of a positive challenge, a positive gift"), as our text is central around the family circle (Robbins 1996b:79). However, in a large extended family [ba tyb], there is every tendency that wives as well as (half) brothers would relate to each other in a manner of colleague contract. The firstborn (eldest brother) and his younger brothers and sisters could also develop into a form of patron-client relationship. Relationship between the father and his wives as well as his children including the firstborn would in many ways resemble patron-client relationships.

##### ***Legal or formal contracts***

As noted above, the book of Deuteronomy (or Deuteronomic Code), patterned after that of the second Millennium Hittite and first millennium Assyrian royal treaty, is in a sense a legal contract between Yahweh and his people the Israelites. Yahweh is represented as the divine Sovereign and Israel, the vassal in Deuteronomy. Deuteronomy 21:15-17 falls under the stipulations or covenant clauses listed by the divine Sovereign. The rhetorical emphasis here is that the rules of primogeniture along with other stipulations are the very words of Yahweh himself, the obedience of which will result in blessing while violation will result in curses.

Genesis 25:31-38 records Esau's alleged sale of his firstborn birthright to his younger brother Jacob. In verses 31 and 33, Esau is reported to have sold [rkM] his birthright, while verse 34 states that Esau hzb (despised) his birthright. In 27:36, Esau complained that Jacob has taken [XQl] his birthright. Does this alleged birthright-lentil stew trade between Esau and Jacob qualify to be termed as a legal or formal sale contract? We shall examine this in detail below under the "ideological texture".

#### 4.4.4.4 Challenge-response (riposte)

Challenge-response (riposte) is a "type of communication in which messages are transferred from a source to a receiver... The channels are always public, and the publicity of the message guarantees that the receiving individual will react in some way, since even his nonaction is publicly interpreted as a response" (Robbins 1996b:80). This social topic operates within the context of honour and shame culture. Meant to take place among equals, the challenge-response has at least three phases: "(a) the challenge in terms of some action (word, deed, or both) on the part of the challenger; (b) the perception of the message by both the individual to whom it is directed and the public at large; and (c) the reaction of the receiving individual and the evaluation of the reaction on the part of the public" (Robbins 1996b:80).

The challenger in our present text is Moses, the lawgiver, and the receiver a polygamous Israelite man and father. Based on the opposition Moses received from some (Num 12; 16-17), and the rhetoric which portrayed him as "a very humble man, more humble than anyone else on the face of the earth" (Num 12:3), we may say that the communication originally took place between equals, although it may not sound the same in later years after Moses was venerated as the great and most authoritative lawgiver (leader) of the Israelites. The oral tradition of primogeniture is now made a written instruction and the Israelite men were publicly challenged to do accordingly. The spirit of the rhetoric expects a full corporation on the part of the Israelite men and fathers.

#### 4.4.4.5 Agriculturally based, industrial, and technological economic exchange systems

Social-scientists describe *reciprocity* and *redistribution* as two main distribution systems in the pre-industrial agricultural based society like ancient Israel. Reciprocity was a clan-based system. There are different levels of reciprocity (Robbins 1996b:83): *full reciprocity* (goods and services were freely given among close family/clan members); *weak reciprocity* (among members of a cadet line

within a clan, gifts were given; but an eye was kept on the balanced return-flow of counter-gifts); *balanced reciprocity* (where distant tribal kin were involved, the element of watchful calculation grew greater, and the time within which the counter-gift would have to be made grew less); and *negative reciprocity* (outside the tribe mutuality ends – like morality, it holds good only for tribesmen. An outsider was fair game for clever dealing in an exchange: one could haggle, cheat, and lie).

Redistribution, on the other hand, is a mark of the historical transition from tribalism to more stable and centralised communities, usually organised around a shrine or temple. Redistribution was done through a system of a central temple storehouse. The practice appears to have originated in Sumer and spread to Egypt. The Priestly groups controlled and directed the redistribution, generally among non-agricultural workforce such as artisans and female weavers. All others obeyed. Thus was born internal peace and order, and with it, the state (Robbins 1996b:83).

The above analyses of Robbins seem to be based solely on the Western perspective. It should be noted that, in some African and Asian societies, full reciprocity remains the norm even after the transition from agricultural to industrialised economy, especially among extended family members. The primogeniture text of Deuteronomy 21:15-17 is, as noted above, probably a late monarchic or exilic text (Van Seters 1975:38). In either period, the economic system was the “subsistence farming based on a household economy” (see McNutt 1999:195 who also points out that this subsistence farming economy was the practice of both monarchy and Babylonian and Persian periods). Both reciprocity (mutual) and redistribution (power) are at work in Deuteronomy 21:15-17. Members of this family have mutual obligations to one another, yet at the same time, the firstborn office is an envied and coveted office, as it yields tremendous power and hegemony over other members of the family. The father wants to exercise his power in the redistribution of the family land. But that was not to be the case. He has but to follow the rule – two-thirds share for the firstborn and the remaining to be divided equally among other sons.

#### **4.4.4.6 Peasants, labourers, craftspeople, and entrepreneurs**

Peasants were “rural smallholders under the control of outsiders” who “operated in terms of the family labour year”<sup>82</sup> (Robbins 1996b:84). They “exchange part of what they produced for

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<sup>82</sup> A peasant and his family must “grow enough food to keep him and them and their livestock until the next harvest, with enough seed-grain to plant next year’s crop...; produce a surplus enough to obtain the occasional iron implement or utensil, to contribute to local festivals, and to make a loan to a neighbor in need... to acquire the reciprocal right to call on his neighbor when he himself was in adversity, from such festivals stemmed the litter traditions of peasantry –

manufactured goods that they could not make themselves in some form of instrumental exchange”; hence “they played only a subordinate role” and “feared representative of the high culture or ‘Great Tradition’” (Robbins 1996b:84).

Although Robbins put it under a separate sub-section, this social texture is closely related to the preceding one. The majority Israelites during the late monarchic and exilic were rural peasants or subsistent farmers although power was concentrated in urban areas, especially the two capitals – Jerusalem in Judah, Southern Kingdom, and Samaria in Israel, Northern Kingdom (McNutt 1999:151-158 and works cited there). Some scholars, for example, Weber (1952:56-57), have argued that, with the rise of monarchy and urban centres, differentiation and class antagonism arose between urban patricians. This group of people owned large estates while the great mass of rural farmers were debt-laden or deprived of land (see McNutt 1999:159). Alt (see Bendor 1996:270-279), on the other hand, argues that even before the rise of monarchy there was already a class of elite families whose elders began to assume economic control over local communities. Against these, Bendor (1996:209-211) explains that the network of kinship groups in rural communities would have been strong enough to defend and preserve their patrimony to a great extent. In this way the families and clans could have continued to own lands even after the rise of monarchy. For Bendor (1996:209-201), kings acquired lands mainly through the conquest of new territories (but see 1 Kings 21). Based on these arguments, we could conclude that there were three kinds of land holders in late monarchic period – smallholders (peasants) or subsistent farmers, wealthy land holders/owners who hold large ranges/tracts of land, and kings who hold much larger land than wealthy landlords.

There is no indication concerning the socio-economic status of a land holding man [Vjā] in Deuteronomy 21:15-17. He could be a peasant subsistent farmer, a wealthy landowner, or a king. The rhetoric seems to aptly include all the categories. However, if we take the two-thirds share for the firstborn in terms of inheritance only, excluding succession, the rhetoric could well be particularly directed to the upper class people (wealthy landowners and kings). For smallholders, after the firstborn takes two-thirds, nothing much would be left for the younger ones. But as noted above, two-thirds share represents prime heirship or succession. In that case, two-thirds would also equally apply to peasant families as well.

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peasant social insurance; and produce funds for rent adequate to satisfy his landlord or tax collector” (Robbins 1996b:84).

#### 4.4.4.7 Limited, insufficient, and overabundant goods

This topic too is closely related to the preceding two topics. A peasant is in a way a content and “wantless” person. Because all goods things (food, land, honour, standing) are considered limited and insufficient as well as its quantities not increasable, “if one peasant gained a greater share of any one of them than heretofore, he was thought to have done so at the cost of his fellows. This notion was the cause of unending, unrelenting struggle and suspicion in peasant community” (Robbins 1996b:84-85). Robbins (1996b:84-85) does not comment on the overabundance which can lead to a desire to have more. Both limited or insufficient (peasants) and overabundant (wealthy and royal families) goods are represented in Deuteronomy 21:15-17. As primogeniture is associated with wealth and power, there would surely be unending and unrelenting struggle and suspicion in the family and society whether primogeniture rule was followed or the choice of the firstborn was open for all the sons. Deuteronomy 21:15-17 portrays a vivid picture of it.

#### 4.4.4.8 Purity codes

According to Robbins (1996b:85), “purity is about the general cultural map of social time and space, about arrangements with the space thus defined, and especially about the boundaries separating the inside from the outside.” The Torah repeatedly says to make Israel a holy people (Exod 19:6; Lev 19:1-2; Deut 7:6). In terms of spatial holiness, the land of Israel, Jerusalem city, and the temple (varying degrees of holiness within the temple) are regarded holy (Num 5:1-4; 11:24-29).<sup>83</sup> There are clean and unclean animals, birds, and fish. In terms of people, the sequence of purity concept is as follow (Robbins 1996b:85; see also Malina 1993:159-160): At the top of the ladder are the priests followed by the Levites, Israelite men, illegal children of priests, proselytes or Gentile converts, proselytes who once were slaves (proselyte freedmen), illegitimate sons (born of incestuous or adulterous unions), “fatherless”, (not orphans but born of prostitutes), foundlings,

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<sup>83</sup> Despite being a late edition, the following Mishnah, Mishnah Kelim 1:6-9 (quoted in Weinfeld 1993:219-220), written ca. 200 CE (Cohen 2006:5), somehow reflects the concept of spatial holiness surrounding the land, Jerusalem city, and the Temple in the Old Testament times: “The land of Israel is holier than any other land. Wherein lies its holiness? In that from it, they may bring the ‘Omer, the first fruits, and the two loaves, which they may not bring from any other land. The walled cities are even holier, in that they must send forth the lepers from their midst ... Within the wall is even holier, for they may eat the lesser holy things and the second tithe. The Temple Mount is even holier, for no man or woman that has a flux, no menstruant, and no woman after childbirth may enter therein. The hyl [rampart] is even holier, for no non-Jew and no one who has been near a corpse may enter therein. The court of the women is even holier, for no one that had immersed himself that day may enter therein ... The court of the Israelites is even holier, for no one whose atonement is yet incomplete may enter therein ... The court of the priests is even holier, for the Israelites may not enter therein ... Between the porch and the altar is even holier, for no one may enter therein with hands and feet unwashed. The holy of holies is the holiest of all, for no one may enter therein except the High Priest on the Day of Atonement” (cf. Cohen 2006:65-67, 191-192 for purity codes during the Second Temple period).

eunuchs made so by men, eunuchs born that way (those with deformed sexual features), hermaphrodites (persons who have both male and female characteristics), and finally at the bottom were the Gentiles. Women were outside of the sequence, that is, lower than the Gentiles. So being both a Gentile and a woman would be double impurity.

One of the prominent features of Deuteronomy is its display of “an aggressive, passionate and uncompromising nature, indicating its zeal for reform and religious purity” (Clements 2001: xix). As part of the book of Deuteronomy, spatial holiness – the land, Jerusalem (implied in terms of where the central sanctuary would be located), and the temple (central sanctuary) - are all represented in the primogeniture text of 21:15-17. This is a part of the covenant stipulations that must be applied in the holy land and holy city and a covenant to be deposited in the holy temple to be periodically read to the public. Varying degrees of holy people are represented in the text. At the top of the pyramid is Moses, the primogeniture lawgiver, a holy priest *par excellence*. Being an Israelite man, the man and his sons are in the third holiest category. The question of holiness does not seem apply to women. The two wives, being women, do not even make it to the bottom of the holiness sequence. According to this sequence, Gentile men seem holier than Israelite women. The firstborn is represented as significantly pure, purer than his younger brothers. The reason given being because he is the first fruit of his father’s procreative strength, a product of undiluted semen.

#### **4.4.4.9 Marriage and family in ancient Israel**

Given that the New Testament is full of metaphors and terminologies relating to marriage and family, it is surprising to see that Robbins (1996b) does not include the phenomena of marriage and family under his common social and cultural topics. The *Sitz im Leben* of our primogeniture text of Deuteronomy 21:15-17 is marriage and family life in ancient Israel. We will not understand theological-ethical meanings and nuances of patriarchy in the Old Testament if we do not understand the Israelite marriage and family life. We have briefly analysed marriage and family in the Ancient Near East in Chapter Two and in Excursus Three. In the preceding chapter and in the present chapter, we have touched on the issue of family. This section thus aims at synchronising and summarising what we have discussed so far on the family, with some additional inputs.

The two common Hebrew terms used for marriage are  $\text{xlq}$  (to take as wife)<sup>84</sup> and  $\text{l[b}$  (to marry, to be married).<sup>85</sup> Almost all the subjects of these two verbs are men (males). This is another clear indication of the patriarchal nature and culture of the Israelite family. The nominal meaning of  $\text{l[b}$  is “owner” or “lord.” Based on this meaning, it would be logical to assume that for an ancient Israelite woman to be married with a man is to be owned, lorded, or ruled over by her husband. However, a careful study of some of the texts relating to marriage, especially the first recorded marriage texts of Genesis 1:26-27; 2:24, show that ancient Israelite wives were not mere property or servants; they had their place, dignity, and worth (King & Stager 2001:49-52).

For the Old Testament, marriage institution is as old as the creation itself. Thus the New Testament (Mk 10:6, 7) regards God’s creation of humankind as male and female in Genesis 1:26-27 and the two becoming one in 2:24 as the twin pillars of marriage. Humanity is defined as bisexual to make each partner the complement of the other (Kidner 1967:52). In this researcher’s opinion, Genesis 2:24 is a text which goes against the grain of the contemporary marriage custom of ancient Israel. Block (2003:40) observes that like its contemporary Ancient Near East societies, marriage and family in ancient Israel was patrilineal (official lines of descent were traced through the father’s line; Gen 5; 10; 36; etc), patrilocal (married women joined the households of their husbands), and patriarchal (the father governed the household). From this viewpoint, the marriage text of Genesis 2:24 should have read: For this reason  $\text{hva}$  (a woman) will leave her father and mother and be united with her  $\text{vya}$  (husband)...” But the text as we have it today puts it the other way round; it makes the man leave his father and mother and be united to his wife. This is a matrilineal and matrilocal text *par excellence*.

From this perspective, it could be that the term  $\text{hrkb}$  (nominal feminine) was originally used to refer to the firstborn daughter, the prime heir of the matrilineal family. The words  $\text{rkb}$  (firstborn son) and  $\text{hrkb}$  (firstborn daughter) could have been an assonantal pair.<sup>86</sup> When the society became patriarchal, patrilineal, and patrilocal,  $\text{rkb}$  (firstborn son) replaced  $\text{hrkb}$  (firstborn daughter) as the prime heir of the family and the word  $\text{hrkb}$  became the birthright of the firstborn son. Thus, unless

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<sup>84</sup> See Exod 21:10; 33:17; Lev 14:6; 14:10, 42; 15:14; 16:5; 20:14; 20:17, 21; 21:14; Num 5:17; Deut 10:17; 22:13; 23:1; 24:1, 5; 1 Sam 2:14-15; 2 Sam 24:22; Ps 109:8; Prov 10:8; 21:11; 22:27; Isa 28:19; 57:13; Ezk 46:18; Hos 4:11; Mic 1:11.

<sup>85</sup> See Gen 20:3; Deut 21:13; 22:22; 24:1; 1 Chr 4:22; Prov 30:23; Isa 26:13; 54:1, 5; 62:4; 65:5; Jer 3:14; 31:32; Mal 2:11.

<sup>86</sup> In 1 Sam 14:49, the firstborn daughter is called  $\text{hrykb}$ , probably a variant of  $\text{hrwkb}$  (see Milgrom 1976:337 who spells according to the latter).

Genesis 2:24 is the author's polemic against his perceived ill custom of his contemporary Israelite society where importance and emotional attachment were placed heavily on one's parents at the expense of one's wife, such a concept of a man leaving his father and mother to join his wife would appear to be a collective memory of recent matrilineal and matrilocal culture that had spilled over to the proto marriage text of Genesis. As noted in Chapter Two, Elam was a matrilineal society. Therefore, it would be interesting to study the possible ancestral link between the Elamites and Israelites. However, this is beyond the scope of this research.

If Genesis 2:24 is not a trace of recent matrilineal and matrilocal culture, then a theological-ethical interpretation must be sought. God made male human [~da] out of the soil/earth [hmda] and female human [hva] out of ~da (Gen 1:26-27; 2:7, 23). In Genesis 2:24, the word vja is used as a synonym of the word ~da of the preceding verses. A possible reason for this could be that, through the use of the assonance vja/hva, the narrative author may have been drawing attention to both the differentiation of functions and the oneness of man-and-woman...in a new community of exchange, in reciprocity of needs, in a mutuality of responsible concerns (Hamilton 1997:540 and literature cited there). From this assonantal formula, we could possibly and logically conclude that God created man [vja] and woman [hva] equal, which means that husband [vja] and wife [hva] are equal. Sequence in creation does not necessarily imply hierarchy (Hess 2005:79-95).<sup>87</sup> We see this principle of equality and reciprocity at work in relationship between Abraham and Sarah – Abraham listened to or obeyed what Sarah had initiated concerning the acquisition of a surrogate child through her maid (Gen 16:2-4; cf. Janzen 1993:42).

However, in the process of cultural and societal developments, the interest and concern about the husband's family (parents) and community interest would appear to have attained the precedence over oneness, reciprocity and equality between husband and wife. The writer of Genesis must have seen this phenomenon as detrimental to the relationship between husband and wife. Thus the command in Genesis 2:24 that an vja is to bz[ (a very strong verb meaning to leave, to forsake, implying abandonment, see also Ps 22:1) his father and mother and cleave to his hva could be regarded as a circumvention of the patrilocal and patriarchal custom of the society for the greater good of the family. Whatever loyalties an vja has to his parents, his ancestors, or his community, all of which are proper and noble, they must never take precedence over an vja's loyalty to his hva (cf.

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<sup>87</sup> See also recent outstanding and comprehensive works by different authors on biblical view of equality between men and women in Pierce & Groothuis (eds) (2005).

Hamilton 1997:537-540). This instruction of leaving one parents and cleaving to one's wife include the firstborn son, the very heir of his father. This is a radical revolutionary approach, possibly a critique of patriarchy (see below).

Judging from the absence of a divorce narrative as well as the limitation of divorce instruction to a single text (Deut 24:1-4; cf. Blenkinsopp 1997:65), we could possibly assume that divorce was not a frequent and common occurrence in ancient Israel. The reason for this rare occurrence of divorce may have been because of the concept of the sacredness and permanence of marriage (Gen 2:24) as well as due to far reaching social and economic implications divorce would create (see **Excursus Seven** for further discussion on "Marriage and Divorce in Ancient Israel").

As noted above, primogeniture was a commonly practised custom for inheritance and succession in ancient Israel. A careful study of the purpose of the primogeniture custom would indicate that it was more of a familial responsibility than a privilege. Deuteronomy 21:15-17 protects the firstborn from a capricious father. But Deuteronomy also protects fathers from their rebellious sons. The law that follow the primogeniture law of Deuteronomy 21:15-17 is a law about parental authority and children's obedience to their parents (Deut 21:18-21). The provision fortifies the authority of the father in normal circumstances (Thompson 1974:230). In Exodus 21:15-17 and Leviticus 20:9, a child who struck or cursed his parents was liable to the death penalty. Deuteronomy 21:18-21 follows the same precept and here describes in outline the procedures to be followed (see also LH §§168, 169). While the possibility of parents taking their own sons to court appear extreme, for the Old Testament, a stable family was fundamental for stable community and respect for parents was vital to the whole community of Israel (Deut 5:15; cf. Thompson 1974:230-231; Phillips 1973:143). Considered a crime, the repudiation of parental authority was a serious matter for the community as a whole (Watts 1970:260). An interesting thing in this instruction is that the mother is deemed competent as a witness despite her sex. The reason for this could be that it is important that parents agree on such an extreme step. This finds expression in Isaiah 1:2, where the Lord is reported to have decided to bring a suit against his own offspring in open court and thus presents his indictment (Watts 1970:260).

Based on the case to be taken to the elders, this provision, an extension of the fifth commandment to honour and submit to the authority of one's parents, must be older than the Deuteronomic reform (see Deut 1:9-18; 16:8), the original purpose of which was to give children no option but to accept their parents' faith (Deut 5:16), but later extended to include any form of disobedience, from physical assault (Exod 21:15) to generally dissolute behaviour (Phillips 1973:142-143). According

to Kalland (1992:133), this son was not only stubborn and rebellious, he was incorrigibly disobedient and no hope remained for such a person because disobedience was a serious sin in the Bible (Num 20:10). The case of the rebellious son here also links directly with the concern with the law regarding inheritance that has preceded it in 21:15-17. The rebellious son in question could be either the firstborn or any of his younger brothers. Regardless of who he is, such a rebellious son could potentially ruin the entire household when the father died (Clements 2001:98). There is no evidence of carrying out a sentence of capital punishment on a rebellious son. The provision of the capital punishment thus seemed to be a deterrent to discourage children from committing such a serious offence.

Unlike a case in the narrative instructions where Judah (father-in-law) has the authority to pass a death sentence over Tamar, his daughter-in-law (Gen 38:24), Deuteronomy required parents to present their rebellious son before the elders for the final sentence. This seriously challenges the traditional assumption that fathers in ancient Israel exercised virtually unlimited *patria potestas* (“paternal power”), even over the life and death of their children (Block 2003:53, n. 93; Wright 1990:30-38). This implies that fathers in ancient Israel did exercise their paternal authority whenever necessary. Great emphasis is placed on control, hierarchy, and subordination; and children of all ages are to be docile to parents (Blenkinsopp 1997:83). Having said that, it must also be remembered that the Old Testament is concerned more about shouldering paternal responsibilities than exercising paternal authority, as “the father’s own interests were best served when he secured the well-being of his children” (Block 2003:52-53).

In so doing, each person was held “accountable for the maintenance of the economy and personal well-being of the extended family” (Matthews 2003b:293) under the headship of the father. Somewhere in the line of Lerna’s definition of the Israelite family as paternalistic dominance (see Chapter One), Block (2003:40-48) suggests that patricentrism<sup>88</sup> characterises the Israelite family [ba tyb] more correctly than patriarchy. He then concludes that headship in the Israelite family was

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<sup>88</sup> Block (2003:40-44) advances three basic reasons for using the term “patricentrism” rather than “patriarchy”: (1) Because of its ruling connotation and female abusive examples in the Bible although this was a far cry from the normative ideal of patriarchy, the term is best avoided. (2) Patricentrism reflects the normative biblical disposition toward the role of the head of a household in Israel more accurately than does the word patriarchy. (3) Although the father did indeed function as the ruler of the household (Gen 18:12; Exod 22:8), the Old Testament pays relatively little attention to the power of the husband and father. On the contrary, since the family members were perceived as extensions of the progenitor’s own life, the head’s own interests depended upon the well-being of the household. Rather than evoking images of “ruler” or “boss,” the term “father” expressed confidence, trust and security. For this reason, on her part, Meyers (1997:34-35) prefers to characterise the Israelite society in general as androcentric rather than patriarchal. Although, this researcher agrees with Block’s thesis, for consistency, we will continue to use the term “patriarchy” in this research, albeit having meanings and nuances of Block’s “patricentrism.”

a responsibility rather than a privilege (or ruling). Paternal responsibility and authority go hand in hand in the Old Testament (see also Blenkinsopp 1997:66-78). Within the functions of the family, paternal responsibility covers economics (production and consumption), reproduction, nurture, education, military, judiciary (see Perdue 1997a:168-174). The father was also the priest of the family religion and ancestor cult, especially during the pre-exilic period (Blenkinsopp 1997:78-82).

In return, sons are to respect and obey their parents, take care of them when they grew old, and provide fitting funerals for them<sup>89</sup> (see also Perdue 1997a:189-191; Blenkinsopp 2001:175-180 for discussion on roles of women, children and young adults in the family). The Old Testament expresses humanity “first and foremost in the context of community. No individual is an island. Vertically, the lives of children were perceived as extensions of the lives of their parents, and horizontally, all found their identity and security in society, whose basic building block was the household,” and the “focal point of the family was the father, who exercised authority over the entire household but more importantly carried the welfare of each of its members on his shoulders” (Block 2003:101; see **Excursus Eight** for further discussion on paternal responsibilities).

We have noted that paternal authority and paternal responsibility went hand in hand in ancient Israel. At this point, the question is what is the position of the firstborn in the family daily life? According to Blenkinsopp (2001:173), the term *ba tyb* itself suggests that “this basic kinship unit functioned by patrilineal descent, the eldest male offspring taking over the head of the household.” Even in the father’s life time, the firstborn was ranked second only to the head/father of the family. In Genesis 37:29-30, Reuben is presented as the leader of the brothers. The firstborn thus would automatically become the successor of his father. This successor status was “bound up with responsibilities and obligations on the one hand and with rights, privileges, and prerogatives on the other” (Sarna 1989:181).<sup>90</sup> As the prime heir, the firstborn received two-thirds of the estate. Tigay (1996:196) gives the family responsibility as the sole purpose for choosing a principal heir:

The purpose of granting one son a preferential share may have been to enable him to bear additional responsibilities as head of the family, such as managing the estate on behalf of the survivors, providing for survivors who were minors, bearing the costs of burying and mourning for deceased parents, or simply to enable him to carry on his father’s name in dignity... his choice may have been based on his estimation of who could best carry out these responsibilities.

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<sup>89</sup> Ishmael and Isaac together buried their father Abraham (Gen 25:8-10), so did Esau and Jacob together buried their father Isaac (Gen 35:29).

<sup>90</sup> Thus Block (2003:82-85) who accepts the firstbornship as a responsibility other than a privilege. But he contends that the firstborn is not necessarily the biological firstborn; it is a privileged and honorific position which could be given to any son. Although Block is right in saying that the firstborn position is a responsible and honorific position, to say that anyone could occupy this position is against the spirit of Deuteronomy 21:15-17 and related texts discussed above.

Assuming primogeniture for ancient Israel, Clements (1998:446) too suggests the idea of responsibility for giving the firstborn son of an Israelite household a unique status as the primary heir of the family and was accordingly entitled to a significantly increased share in the family inheritance: “[I]t was the privilege and duty of the firstborn son to become the head of the family estate. In the course of time, when the father had to surrender his control over family affairs through physical weakness or death, then the eldest son would assume his mantle.” Bendor (1996:179) supports this responsibility clause by saying that a number of advantages support the firstborn’s superiority in the day-to-day reality of the family: he is the first of the sons to be active in the farmstead, he is the first to learn from his father, he is accustomed to assuming authority over those younger than him, and his is also the first to establish a nuclear family of his own.

Fortes (1974:81-104; see also Bendor 1996:175) identifies three things peculiar to the eldest son in the social and psychological system, which serve as a basis for the set of relationship connected with him: (1) his birth confirms “parenthood as a fact” (his progenitor becomes a father); (2) with him is founded the generation of sons; (3) he is head of the group of brothers. Brin (1994:221, 247) includes conducting the family cult in memory of the familial ancestors and other familial religious functions among the responsibilities of the firstborn.

In the pre-monarchy Israel (Early Israel), the socioeconomic fabric of the society was based on the families and clans. There was a strong solidarity of the family and community. Marriage and family function within this social rubric (cf. Meyers 1997:32-41; Perdue 1997a:167). But that was going to change in the monarchical (First Temple) Israel. With the establishment of the centralised state system emerged large land ownership encouraged by the former for taxation purposes. This has far reaching impact on the Israelite family systems and values, which Perdue (1997a:209-212) calls “royal destabilisation of the household.” The chronically marginal classes of people, including slaves and resident aliens, would become among the first to lose the protection of an economically endangered household. The younger sons would also have been especially vulnerable.

On a different note, Blenkinsopp (1997:90-91) argues that “it would be simplistic to conclude that the disintegration of the house when faced with the invasive power of state institution was entirely a bad thing. Especially in judicial capacity, the state provided a balance and corrective to the potentially arbitrary exercise of patriarchal domination within the extended and multiple family units.” In our present case of primogeniture, we could say that it is the monarchical state judicial capacity which stops the idiosyncratic fathers from displacing their firstborns in favour of the

younger sons for the family inheritance and succession. The result was peace and harmony in the family. The exile and post-exile witnessed the emergence of yet another familial system. As noted above, the emphasis on *twba tyb* took precedence over *ba tyb* as the Israelites reassemble to reformulate their identity (or to “renegotiate”<sup>91</sup> their identity) based on the pre-exilic twelve tribes of Israel. However, in daily marriage and family life, although we see some new developments such as making marriage as a contract, there is no great change in terms of paternal authority and responsibility in the Israelite exilic and postexilic families (Collins 1997:107-115, 147).

In the final analysis, it is of paramount importance to understand the role religion played in the Israelite and Early Jewish household. “The social world of the Israelite and early Jewish household was shaped, legitimated, and given authority by its religious traditions and practices” (Perdue 1997a:203). They include: worshipping household gods (Gen 31:19, 34-35; cf. 1 Sam 19:11-17; see Jer 44:15-28 for oracle against worshipping gods other than Yahweh); the family land as the divinely given inalienable land, which boundary stones may not be removed (Deut 19:14; 27:17; Job 24:2; Prov 23:10; Hos 5:10); establishing household and clan shrines (Exod 23:14-17; 34:28-24; 1 Sam 20:5-6, 28-29); having a household priest (Exod 12; Deut 16; Jdg 18); celebrating household and clan festivals (harvest festival, etc.);<sup>92</sup> veneration of ancestors (Gen 50:10; 1 Sam 31:13; 2 Sam 1:17-27; 3:33-34; 1 Chr 10:12; Jer 16:5-9); and family and national story telling (Deut 6:20-25)<sup>93</sup>. To shoulder and fulfil these functions, the firstborn was thus naturally be accorded the position of the second in rank in the family. When the father died or become incapacitated, he would take all the responsibilities over from him.

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<sup>91</sup> The concept, “identity negotiation”, is adapted from Professor HL Bosman’s comments.

<sup>92</sup> The origins of Sabbath are not clear, but the Decalogue’s two biblical formulations point to the sabbatical regulations as being directed to the members of the household, who are to “remember” or “observe” this day (Exod 20:8-11; Deut 5:12-15). In Exodus 20, the theological basis for remembering the Sabbath is God’s resting on the seventh day after the act of creation (Gen 2:1-3), while in Deuteronomy 5, the reason for observing the Sabbath is to remind households that their ancestors were once slaves in Egypt and enjoyed no respite from labour or liberation from enslavement (Perdue 1997a:206).

<sup>93</sup> See Perdue (1997a:203-207) for more details.

#### 4.4.5 Dominant culture, subculture, counterculture, contraculture, and liminal culture rhetoric

Robbins (1996b:86-89) groups the dominant culture rhetoric,<sup>94</sup> subculture rhetoric,<sup>95</sup> counterculture or alternative culture rhetoric,<sup>96</sup> contraculture or oppositional culture rhetoric,<sup>97</sup> and liminal culture rhetoric<sup>98</sup> together under the “final cultural categories.” Aristotle in his *Art of Rhetoric* (see Robbins 1996b:86) describes the final cultural categories of rhetoric as “final topics” – those topics that most decisively identify one’s cultural location. “Cultural location, in contrast to social location, concerns the manner in which people present their propositions, reasons, and arguments both to themselves and to other people” (Robbins 1996b:86).

Deuteronomy 21:15-17 assumes the existing practice of the tradition of primogeniture. But this was often not followed. The patriarchal inheritance rule of “inheritance by sons only” and the idiosyncratic patriarchal culture of violating the primogeniture law on the part of the Israelite peasant, wealthy land holding, royal fathers, or the “beloved wife” represent the dominant culture modes. Moses or the Deuteronomistic theologian (the prophet-redactor), that is, the giver of the primogeniture “law”, and a good king who would implement these laws represent both subculture and counterculture modes. Making the son of the beloved wife the firstborn in a sense functions as a contraculture rhetoric, as it is an *ad hoc* practice which does not involve more than one generation

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<sup>94</sup> Dominant culture rhetoric is “a system of attitudes, values, dispositions, and norms that the speaker either presupposes or asserts are supported by social structures vested with power to impose its goals on people in a significantly broad territorial region” (Robbins 1996b:86).

<sup>95</sup> Subculture rhetoric “imitates the attitudes, values, dispositions, and norms of the dominant culture rhetoric, and claims to enact them better than members of dominant status”<sup>95</sup> (Robbins 1996b:86).

<sup>96</sup> Counterculture rhetoric “rejects explicit and mutable characteristics of the dominant or subculture rhetoric to which it responds.” It is “alternative minicultures which make provisions for both sexes and a wide range of age groups, which are capable of influencing people over their entire life span, and which develop appropriate institutions to sustain the group in relative self-sufficiency”<sup>96</sup> (Roberts, “Towards a Generic Concept of Counter-Culture” cited in Robbins 1996b:87).

<sup>97</sup> Contraculture rhetoric is a group culture in reaction-formation response to some form of dominant, subculture, or counterculture rhetoric. It refers to groups “that do not involve more than one generation, which do not elaborate a set of institutions that allow the group to be relatively autonomous and self-sufficient, and which do not sustain an individual over an entire life span.” It is predictable and have “more negative than positive ideas” (Roberts, “Towards a Generic Concept of Counter-Culture” cited in Robbins 1996b:87).

<sup>98</sup> Liminal culture rhetoric is characterised by “dialectic of culture and identification” that has neither binary nor hierarchical clarity, this outer edge of identity is a transitional culture that exists only in the language it has for the moment or among individuals and groups that have never been able to establish a clear social and cultural identity in their setting” It features “minimal nationality” as a dialogic process that “attempts to track displacements and realignments that are the effects of cultural antagonism an articulations – subverting the rationale of the hegemonic moment and relocation alternative, hybrid sites of cultural negotiation” (Bhabha, “Postcolonial Criticism” cited in Robbins 1996b:88).

(that is, it cannot be used as a norm for generations to come). The hated wife and her firstborn son represent a liminal culture mode. Subculture and counterculture here are “attacking” the dominant culture in defence of the liminal culture. This seems to be the case in many societies today as well. Subculture and counterculture rhetoric usually emanate from the middle class of society. It is usually (though not always) the middle class who would speak against the oppressor-upper dominant class in defence of the oppressed lower liminal class people.

#### **4.4.6 Summary observations on social and cultural texture of Deuteronomy**

##### **21:15-17**

The analysis of specific social topics of the social and cultural texture of Deuteronomy 21:15-17 indicates Israel’s conscious effort to be different from its surrounding nations by following the instructions of the Torah which have many distinctive characters and instructions compared with that of the narratives and law collections of the Ancient Near East. The analysis of the common social and cultural topics, reaffirms, among others, that ancient Israel was a patriarchal society. However, a closer look at the paternal roles reveals that patriarchy in ancient Israel was more of a familial responsibility than it was a privilege. In short, an Israelite father is to love his children, teach them in the ways of wisdom and the fear of the Lord as well as life vocations. He is to be life example to his children (especially to his sons) concerning how a father is and ought to be. He is to provide and protect his family and maintain healthy familial relationships. In return, children are to obey their parents, take care of them when they grew old, and provide them with proper and honorific burials (the last two being especially the duties of sons).

We have also shown that, although divorce was permitted for various reasons, lack of narrative evidence and concrete legal instructions suggest that it was a rare occurrence. It would appear that, for the sake of children and because of its social and relationship implications, people in ancient times did not seek divorce every easily. The prevalence of honour and shame culture in ancient Israel is strongly evident in the text – the hated wife and her firstborn son must not be shamed by putting the younger son, the son of the beloved wife, above the former (above his face). Sons other than daughters inherit from their paternal estate with the prime heirship going to the firstborn. A two-third share of the estate or prime heirship for the firstborn is strongly tied to his responsibilities. He is second in rank in the family while the father is alive. In the advent of the death or incapacitation of the father, he shoulders the responsibilities of the family. The inheritance of the prime family land by the firstborn and successor of the family headship also prevent the inalienable

family land from alienation. The division of the estate among sons must follow the instructions of the Torah, not according to the wish and will of the father.

The analysis of the dominant culture, subculture, counterculture, contraculture, and liminal culture rhetoric reveals constant clashes and battles between the dominant and liminal cultural groups, with subculture, counterculture and contraculture groups playing in the middle, quite often siding with the liminal group. The husband and his beloved wife represent the dominant culture modes. The promulgator of the primogeniture instruction represents both subculture and counterculture modes. Violation of the primogeniture instruction by making a younger son the firstborn in a sense functions as a contraculture rhetoric. In the reverse, the law-giver's prohibition of the common idiosyncratic practice of displacing the firstborns in favour of a younger son by fathers is also a contraculture mode. Finally, the hated wife and her firstborn son represent a liminal culture mode.

Although we have noted that headship in the ancient Israelite family was more of a responsibility than privilege, it is an unavoidable phenomenon that with responsibility come power and authority. Primogeniture is thus about power, and power in turn is about ideology and vice versa. Ideology also includes political power and is closely related to theology as well.

## **4.5 IDEOLOGICAL AND THEOLOGICAL TEXTURE OF DEUT 21:15-17**

### **4.5.1 Introductory observations**

This section, as the title suggests, will combine the two textures – ideological and theological textures, the latter term replacing Robbins' "sacred texture" – as there are necessary interplays and ideo-theological links between these two textures. According to Robbins (1996b:95-119), ideological texture is an interpretation of people. It is an analysis of the social, cultural, and individual location and perspective of writers and readers of the text. It concerns the way the text itself and interpreters of the text position themselves in relation to other individuals and groups by analysing alliances and conflicts the language in a text and the language in an interpretation evoke and nurture. It also discusses circular biases, opinions, preferences, and stereotypes of a particular writer as well as a particular reader of the biblical text. For that reason, the ideological analysis is more like the intertexture rather than inner texture, as there are always two "texts" the interpreter is interactively analysing. As commented in Chapter One, the theological (sacred) texture, which Robbins (1996b:120-131) defines as seeking the divine in a text, is surprisingly the weakest texture

of Robbins' five-texture analyses. But for this research, this is the central focus which is embedded in the analyses of the other textures, especially between the ideological and theological textures.

Mayes (2000:472) states that "a clear distinction between ideology and theology can scarcely be established: one may speak of a more or less adequate ideology, or of a more or less adequate theology, but both connote a systematic expression of ideas, the articulation of a world view in opposition to others." Although Mayes is quite right in saying that it is difficult to make a clear distinction between ideology and theology, it must be established that the two are not identical. Ideology cannot represent everything theology stands for and vice versa. The clearest distinction between ideology and theology is that ideology is an interpretation in service of power; it is a set of presuppositions that cannot be criticised; while theology is an open-ended reflection about God and his revelation in the Bible. Sociologist John Thompson has proposed a useful definition of the term "ideology" as "meaning in the service of power." He affirms that "to study ideology is to study ways in which meaning serves to establish and sustain relations of domination" (Thompson 1990:7, 56). Thus, in what follows, we will first study the text according to the distinctive characters of ideological and theological interpretations. We will then analyse Deuteronomy 21:15-17's ideological links with other texts, especially with the narratives.

#### **4.5.2 Ideological criticism: Definitions**

Above we noted Robbins (1996b:120-131) definitions of ideology and ideological texture from his socio-rhetorical approach. Ideological criticism is a relatively new interpretive method. Thus further definitions on ideology and ideological criticism by different authors would be helpful. To give a concise dictionary definition, ideology is "ideas and manner of thinking characteristic of an individual or group, shaped by political, social, religious and other factors (conscious, unconscious and subconscious) and providing the frame of reference within which he or they judge and act" (Deist 1984:120). For Soulen & Soulen (2001:84), ideology was originally developed in the Marxist tradition in order to describe how cultures are structured in ways that enable dominant groups to exercise maximum control with the minimum conflict. It is a set of attitudes and ideas, consciously or unconsciously held, that reflects or shapes understandings (and misunderstandings) of the social and political world. It serves to justify collective action aimed at preserving or changing it. These ideas orient people's thinking in ways that lead them to accept their current roles in society as natural, inevitable, and necessary. It is through a conceived ideology that the fundamental structure of a society is defined and justified.

According to Yee (1999:534-535), although the term “ideology” has acquired a pejorative connotation of “false consciousness” based on Marxist’s analysis noted above, it usually refers to a complex system of ideas, values, and perceptions held by a particular group that provides a framework for the group members to understand their place in social order. Ideologies are forms of power that influence and direct social groups. For Eagleton (1991:223), the term “ideology” “represents the points where power impacts upon certain utterances and inscribes itself tacitly within them.” In a more classical approach, François Châtelet (quoted by Siméon 1972:31, quoted by Mottu 1993:317) defines ideology as

a cultural formation (implicit) or a cultural production (explicit) that expresses the point of view of a social class or caste; such a point of view concerns man’s relations with nature, imagination, the others, and himself. Ideology presents itself as having a universal validity; but in reality it not only expresses a particular point of view, but also it tends to mask its particularity by proposing compensations and imaginary or fleeting solutions. By ‘ideological function’ of a cultural production – a moral doctrine for instance – one has to understand the intellectual action that brings such a production, and action by which this particular conception is being presented as a universal conception.

Based on these definitions, Yee (1999:535) states that the ideological criticism of the Bible specifically investigates three things: (1) the production of the text by a particular author in a specific, ideologically charged historical context; (2) the production of ideology in the text itself; and (3) the consumption of the text by readers in different social locations who are themselves motivated and constrained by distinct ideologies. Ideology is also manifested both intrinsically and extrinsically. An intrinsic ideological analysis of a biblical text, according to Yee (1999:535), is particularly concerned with power. It “tries to determine the types of social, political, and economic structures wielding powers when the text was written; and it clarifies the kinds of power these structures exhibit, i.e., formal or informal, legal, cultic or religious.” An extrinsic ideological analysis “investigates power groups according to gender, class, race, religion, region, etc., to see if any patterns of power emerge.” It “determines the control these groups exert over the means of production and sources of power; and it explores the antagonisms, clashes, and contradictions that exist wherever power operates” (Yee 1999:535).

Yee (1999:537) believes that “ideological criticism can help the exegete to become more aware of how the biblical text is currently being used to support opposing groups,” which “can enable the exegete to become conscious of personal ideological blind spots and constraints to produce a more ethically responsible reading.” For this reason, he warns that ideology should not be identified with reality. Ideological criticism focuses on the biblical text as a site of struggle for competing ideologies during its production in antiquity. In short, an ideological criticism of the Bible is “the

process of discovering and describing the ideology underlying any human activity in order to establish the conditions under which statements, actions, decisions, etc are produced and to assess by the ideological standards the truth contained in such projects” (Deist 1984:120). In so doing, ideological criticism basically examines “ideology at work in three variables of biblical interpretation: the author, the text, and the reader” (Yee 1999:535). In the following, we shall first analyse the type of “ideology” at work in the present reader (this researcher) which Robbins (1996b:96-105) calls individual ideological location of the interpreter and his/her relations to groups he/she affiliates.

### **4.5.3 Individual ideological location of this researcher and his relation to groups he affiliates**

Earlier in Chapter One and in Excursus Three, mention is made of this researcher’s individual ideological location and relation to groups. In many respects this researcher could claim an insider’s experience or knowledge on different matters raised in Deuteronomy 21:15-17 and parallel texts, albeit from his own cultural perspective.<sup>99</sup>

With regard to the interpretation of the primogeniture text of Deuteronomy 21:15-17 from an evangelical perspective (a “corporate body” with which this researcher is affiliated), this research would argue that obedience, familial responsibility, and natural/creation order are central motifs of the text. A father today may not be required to give two-thirds of his estate to his firstborn son and

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<sup>99</sup> Being a child of a polygamous family, this researcher could immediately identify with the text, “If a man has two wives...” This gives him an insider’s knowledge and experiences of wives rivalry and gossips in polygamous families. Being from society where the entire estate goes to the prime heir (the firstborn or lastborn depending on the region), the interpretation of  $\sim\text{IV } \text{yD}$  as two-thirds of the estate, which basically is an expression of the firstborn as the prime heir and successor (cf. Phillips 1973:141), is easily understandable and acceptable for this researcher. Fathers as well as children in Marâland normally would not change the primogeniture or ultimogeniture rule. Thus, for this researcher, a father in question in Deuteronomy 21:15-17 who wants to make his younger son the firstborn against the existing rule of primogeniture is an unusual idiosyncratic behaviour on the part of that father. Coming from a closely knitted society (where the haves help the have-nots financially and the have-nots in turn reciprocate in terms of service or gifts in kind) and having worked in different countries of Africa where patron-client relationships are common, this researcher is privileged to have an insider’s experience of reciprocity and patron-client relationships. As a missionary who wants to see godly societies where the fear of the Lord reigns, this researcher is also a conversionist. From the Old Testament perspective, this conversionist ideology finds expressions in both the Priestly theology of holiness and Deuteronomistic theology of blessings for obedience and punishment for disobedience. From the perspective of justice for the world, this researcher is a revolutionist. This revolutionist social justice finds expression in the prophetic movement of social justice in the Old Testament. Two-portion inheritance is the firstborn’s right. This right may not be taken away from him. This researcher laments how many individuals and societies rights’ have been trampled away and taken by the rich and powerful even in our own times. As an ethicist, many wisdom sayings and proverbs in the Bible as well as in Marâ society and in other societies have special appeal to this researcher. In this sense, he is also a manipulationist. From the Old Testament perspective, manipulationist finds expressions in the wisdom literature that are found in all three theological traditions of wisdom, Deuteronomistic, and Priestly theologies.

divide the remaining one-third equally among his young sons excluding his daughters. But he is still required to fulfil his fatherhood responsibilities and maintain healthy familial relationships by obeying the biblical commandments for fathers. Regardless of whether one is monogamous or polygamous, a husband is to be faithful to his wife/wives. The text also emphasises the significance of the firstborn because he is the first fruit of his father's procreative power. For this reason, the firstborn is by nature made the prime heir of the family. This in turn places him in a position of shouldering family responsibilities. This finds expression in male [Vjā] as God's first (pro)created human followed by female [hva], thus signifying the greater responsibilities that befall on males (fathers and brothers) in shouldering family responsibilities and maintaining healthy family relationships.

However, we need to warn that there is also danger that a church's particular view of reading of the Scriptures could attain an ideological level. Once a system is ideologised it can become idolatrous. By the same process of canonisation of the Scriptures, a particular church could dangerously canonise its interpretation of the Scriptures. When this is done, the Scriptures will lose its meaning and relevance as well as its status as a living word of God.<sup>100</sup> Thus church and seminary inclined interpreters need to be in constant dialogue with those in public universities who prize objectivity, otherwise church dogmatic interpretation could consciously or unconsciously become "an ideological distortion of the text" (Brueggemann 2003:7 and works cited there). At the same time, it should also be noted that members of churches and seminaries are the ones who want to read and study the Bible seriously. Therefore, scholars of public universities need to relate to churches and seminaries with respect if they want to help them understand the Bible more objectively.

Brueggemann (2003:8-13) argues that, through a relentless act of imagination, a tradition could become a scripture. For the Bible, this traditioning process is deeply permeated by the ideologies of the religious communities of Judaism and Christianity. These faith communities take the Bible to be normative and affirm in a variety of ways that this text is inspired. Calling these ideological traditions as "imaginative remembering," Brueggemann then concludes:

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<sup>100</sup> Churches and seminaries (and scholars who associate with these) normally agree that "the theological intentionality of the text is more important and roughly runs over what might be taken as historical" (Brueggemann 2003:7). This is a positive thing. Beyond the claim of "classic," the faith community must preserve its doctrine that "the Bible as the church's Scripture is without parallel, for it is God-given – given to be sure through the quixotic work of human beings – as original testimony to the truth of God's presence in and governance of all creation. However, it must be remembered that because the Bible is "God-given ... through the hidden workings of ordinary life, the book endlessly summons, requires, demands, and surprises with fresh reading" (Brueggemann 2003:12). Thus the churches must understand that "the only way to turn the book into a fixed idol is to imagine that the final interpretation has been given, an act of imagination that is a deep act of disobedience to the lively God who indwells this text. The only way to avoid such idolatry is to know that the lively God of the text has not given any final interpretation of the book that remains resistant to our explanatory inclinations" (Brueggemann 2003:13).

This act of imaginative remembering is the clue to valuing the Bible as a trustworthy voice of faith while still taking seriously our best critical learning... The traditioning process that came to constitute the church's Scripture is not an innocent act of reportage. It is, in each of its variations over time, an intentional advocacy that means to tilt the world of the next generation according to a conviction of faith.

In the final analysis, the emergence of different, sometimes competing, approaches to Old Testament interpretation since the turn of the twentieth century indicate ideologies shared by a network of cliques, gangs, action sets, and factions that in many cases result in different interpretive conclusions and applications, sometimes heading towards binary directions. The same is evident in the interpretation of the primogeniture text of Deuteronomy 21:15-17 and its parallel texts that we have reviewed in Chapter Three. Not only that individual ideological location and relations to group could influence an interpreter's reading of a text, a particular mode of intellectual ideological discourse shared by groups of scholars could also influence one's reading and interpretation of the biblical text.

#### **4.5.4 Modes of intellectual discourse**

Robbins (1996b:106) rightly observes that an

...interpreter's adoption of a mode of theological, historical, sociological, anthropological, psychological, or literary discourse for commentary is a significant matter, since a mode of intellectual discourse is a particular mode of social production. Each intellectual mode of interaction and exchange has a relation to an ideological field in the modern/postmodern world in which we live.

Robbins then proceeds to list five modes of current intellectual discourse for New Testament interpretation, namely, historical-critical discourse, social-scientific discourse, history-of-religions discourse, new historical discourse, and postmodern deconstructive discourse (for definitions, see Robbins 1996b:106-110). These modes of intellectual discourses largely dominate Old Testament interpretation as well. In considering a multidimensional approach for this research, we have listed different modes of intellectual discourse or different approaches to Old Testament interpretation in Chapter One. New approaches that emerged in recent years, such as feminist theology and black theology which investigate gender or racial ideologies in the biblical text and its interpretation add to the list of modes of intellectual ideological discourse (Yee 1999:535).

Not only is understanding the reader's individual ideological location and his/her relation to groups important in the ideological criticism of a text, understanding ideologies at work in the implied

author and the text is an important task of ideological criticism. Robbins (1996b:110-115) studies the ideologies of the author and the text together under the “spheres of ideology.”

### **4.5.5 Spheres of ideology**

#### **4.5.5.1 Ideology in the social and cultural context of the implied author**

Robbins (1996b:111) describes that “a way to begin to build insight into the ideological texture of a text is to analyse the spectrum of social and cultural data the implied author of the text builds into the language of the text.” These data exhibit the social and cultural location of the implied author. For Robbins (1996b:111-113), understanding the ideology in the social and cultural context of the implied author of the text should be based on phenomena such as the previous events, natural environment and resources, population structure, technology, socialisation and personality, culture, belief systems and ideologies, and political-military-legal system.

As discussed in the preceding sections, the primogeniture text of Deuteronomy 21:15-17 presupposes a patriarchal and patrilineal familial system. It is based on the past events of a generally accepted and practised tradition of primogeniture. The text also acknowledges how the Israelite fathers, whose paternalistic dominance had attained an ideological proportion, had been violating this tradition at will. This would be particularly true of the pre-monarchical period when the socioeconomic and political and religious phenomena were concentrated on individual families. A patriarchal family farming and living in the family land is the natural environment of the present text with the family land as the resource. The text is in view of a population of an agrarian society of both rural and urban. The population in this particular text includes the father, his two wives, his children and grand children, hired labourers and slaves (21:10-14), other dependents, the clan members, and the village/town people. The prohibition clause points to the monarchical period. The king and his royal court, which would see to it that the primogeniture tradition is observed, are also implied among the audience. For the pre-monarchical period, the elders at the gate are among the audience (21:18-21).

The society has a technology to farm, to build houses, city gate and palace (implied). With regard to socialisation and personality, the husband and father in question has land and more than one wife, thus he is a respectable man of good social standing. Within his own family, his beloved wife and her children will have more access to him than that of his hated wife and her children. The discourse

is typical of the Ancient Near East culture (patriarchy, polygamy, primogeniture) as well as peculiar to ancient Israel (the significance of the firstborn because of his status as the first fruit of his father's procreative seed). The discourse is also a belief system and ideology surrounding primogeniture (see below). Being a part of the Deuteronomic Code, it has a strong voice of a political-military-legal system (Dearman 1992:134-137).

#### **4.5.5.2 Ideology of power in the discourse of the text**

Above we noted that ideology itself is a form of power. Robbins (1996b:113 and works cited there) describes the analysis of power in the discourse of a text as: defining the *system of differentiations* that allows dominant people to act upon the action of people in a subordination position; articulating the *types of objectives* held by those who act upon the actions of others; identifying the *means* of bringing these relationships into being; identifying the *forms of institutionalisation of power*, and analysing the *degree of rationalisation* of power relations.

In Deuteronomy 21:15-17, the dominant figure in the family is the father. He gives orders to other members of the family who carry out those orders. Within the Deuteronomic Code, the royal court would be the dominant figure which promulgates instructions for the society including the primogeniture instruction. The objective of the father to displace the firstborn is to honour his beloved wife by making her son the firstborn. The objective of the Deuteronomic Code (royal court) in affirming the primogeniture rule is to recognise the significance of the actual firstborn as well as for responsibility, peace, order, and harmony of the family. The forms of the institutionalisation of power are manifested in terms of the paternal authority in the family, the power of the elders' court (city gate), the authority of the royal court, and the Temple priests (implied for the First and Second Temple periods). Being the first fruit of his father's procreative seed/strength is given as rationale for significance and hegemony accorded to the firstborn.

We noted above in our analysis of the social and cultural texture that, in many instances, patriarchy is represented in the Old Testament as more of a paternal responsibility than paternal authority or privileges. However, there is always a tendency for a movement or system to develop into an 'ism' ideology. This seemed to be the case with patriarchy as well. It is true that patriarchy was a social "system" (Lerner 1986:6). But it must be noted that the term "system" itself contains an ideological phenomenon, which is moving towards a full-fledged ideology. Thus, in the process of time, in some societies, patriarchy as a social system had developed into a patriarchal ideology that may not be challenged. Ancient Israel would appear to be one of these societies. Thus theology of

primogeniture in the Old Testament is in a sense a critique of patriarchy as an ideology. On the one hand, it protects the birthright of the firstborn; on the other, primogeniture as a cornerstone of patriarchy is subject to change and modification according to the changing nature of the society. Many societies today do not apply the primogeniture “law” of the Old Testament in terms of inheritance and succession even if they would be happy to apply it in terms of responsibility. This shows that to justify a society’s patriarchal ideology with the absolute paternal authority on the basis that the Scriptures support patriarchy is unwarranted.

## **4.5.6 Theological texture**

### **4.5.6.1 Introductory observations**

As noted above, theological interpretation (or “sacred texture” according to Robbins 1996b) of a text is the analysis of the relationship between the human and the divine that are explicitly stated or implied in the text. Robbins (1996b:120-131) enumerates eight ways of analysing theologies of a text by identifying and asking questions relating to deity, holy persons, spirit beings, divine history, human redemption, human commitment, religious community, and ethics.

### **4.5.6.2 Deity**

God, or divine being, may exist in the background or in a direct position of action and speech in a text. This is the realm of theology par excellence – the nature of God and God’s action and revelation. Sometimes there is simply reference to God or a god in a text. Sometimes God speaks and acts like another character in the story (Robbins 1996b:120).

There is no direct mention of God in Deuteronomy 21:15-17. However, the text forms a part of a long speech of Moses who is reported to have recited and expounded Yahweh’s words (Deut 1:1, 5). In this sense, instructions on primogeniture in Deuteronomy 21:15-17 are Yahweh’s instructions. Did Yahweh really verbally speak these words to Moses? Or was it the author(s) whose pseudonym is Yahweh? As noted in the intertexture analysis above, the most probable answer to these questions is that the writer of Deuteronomy recites or recontextualises the Ancient Near East law collections, especially the Middle Assyrian Laws (see Chapter Two) or the collective memory of primogeniture tradition in Israel and incorporates it into the Deuteronomic legal instructions. We may call this inspiration. Inspiration of the Scripture, in this researcher’s opinion, is basically the belief that it was the Holy Spirit who influenced the human writers in their careful analysis and choice of stories,

events, words, phrases, clauses, and sentences. From this perspective, even if the primogeniture text of Deuteronomy 21:15-17 is a recitation or recontextualisation of the Ancient Near East law collections or collective memory of the tradition of primogeniture; it is still the word of God. Yahweh's involvement is also implied in the conception and giving birth of children. For ancient Israelites, fertility is a supernatural phenomenon. Therefore, the words such as *dly* (to give birth), *rkb* (firstborn), *tyvar* (first fruit), and *!a* (procreative strength/seed) carry a connotation of Yahweh's involvement and blessing on a *vja* (man and husband) and his family.<sup>101</sup>

#### 4.5.6.3 Holy person

Regularly a sacred text features one or more people who have a special relation to God or to divine powers...Frequently there are holy persons of higher and lower status in a text. The interaction of these people with one another creates an environment in which subtle distinctions can be made between truly authentic religious thought and behaviour and beliefs and practices that are inferior (Robbins 1996b:121).

In the Old Testament texts, the holy persons *par excellence* are the priests and Levites. Prophets, judges, and kings too have a status that associates them with holy things or holy ways. The nation of Israel itself is called a holy nation and thus the people of Israel holy people.<sup>102</sup> Moses is a model of an Israelite identity as a holy nation and people. As the words of Moses, Deuteronomy 21:15-17 thus appeal to the highest authority of holiness. The primogeniture "law" of Deuteronomy given by Moses is, therefore, holy because it is given by a holy God through such a holy man like Moses.

In the present text of Deuteronomy 21:15-17, the concept of sanctity is particularly associated with the firstborn because he is the first fruit of his father's procreative seed. In other texts, the sanctity of the firstborn is associated with the Passover event on the eve of the Exodus. The concept of the sanctity of the firstborn is also attested in some other ancient societies as well (we will return to the sanctity of the firstborn below under the "sanctity, sacrifice, and redemption of the firstborn").

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<sup>101</sup> The belief in the divine role in conception is also attested in Egypt as well. Pharaoh Akhenaten (ca. 1350 BCE) prayed to the sun god, Aten, reads (Coleman 2004:17): "You make the seed grow in a woman, make fluid into mankind; you keep the child alive in its mother's womb and soothe it so it does not weep; you are the nurse even in the mother's womb. You are the one who gives breath to all that is made to preserve life. When the child descends from the womb to breathe on the day of his birth, you open his mouth completely to speak and supply his needs" (Beyerlin et al [eds] 1997:16).

<sup>102</sup> We have noted the sequence of purity concept under the "purity code" above in the "social and cultural texture" studies. To recap, the sequence is as follow (cf. Robbins 1996b:85; see also Malina 1993:159-160): Priests, Levites, full-blooded Israelites ("laymen"), illegal children of priests, proselytes or Gentile converts, Proselytes who once were slaves (Proselyte freedmen), illegitimate sons (born of incestuous or adulterous unions), "fatherless" (born of prostitutes), foundlings, eunuchs made so by men, eunuchs born that way, those with deformed sexual features, hermaphrodites, and Gentiles.

#### **4.5.6.4 Spirit being**

“Sacred texts often feature special divine or evil beings who have the nature of a spirit rather than a fully human being” (Robbins 1996b:123). The Old Testament is not foreign to the existence of such a spirit being (e.g., Gen 18; 19:1-22; 32:22-30). As for our particular text, there is no mention of any spirit being.

#### **4.5.6.5 Divine history, human redemption, human commitment, religious community, ethics**

##### ***Divine history***

“Many sacred texts presuppose that divine powers direct historical process and events toward certain results” (Robbins 1996b:123). In the New Testament, this is the realm of eschatology (“last things”), apocalypse (“end-time things”), or salvation history (“God’s plan for humans works itself out through a complicated but ever-ongoing process that moves slowly towards God’s goals”) (Robbins 1996b:123-124). In the Old Testament, this divine history is a theo-political history of the Israelite nation-building (see below). In line with the New Testament, some would call it salvation history as well. Some texts of the Old Testament, such as, the Book of Daniel, also speak about eschatology and apocalypse.

##### ***Human redemption***

Human redemption dimension of the sacred texture deals with “the transmission of benefit from the divine to humans as a result of events, rituals, or practices. As a result of things that happen or could happen if people do them, divine powers will transform human lives and take them into a higher level of existence” (Robbins 1996:125). For the New Testament this could be either resurrection, “the changing of the mortal nature of humans ... into an immortal nature” or the removal of a burden of impurity of guilt “in such a manner that a person is liberated from powers or practices that are debilitating and destructive” (Robbins 1996b:125-126). In the Old Testament, this is expressed in terms of well-being (good health, long life, many children, wealth, and name) which God grants to humans as a reward of their obedience to his commandments. The change of the mortal nature of humans into an immortal nature is also vaguely presented in the Old Testament (Ps 11:7; 16:9-11; 23:6; cf. Gen 2:9; 3:22, 24).

##### ***Human commitment***

Human commitment, also called discipleship in Christian writings, is human’s response to what the divine has done to them – directly or through holy persons. Thus the sacred texture “regularly

includes a portrayal of humans who are faithful followers and supporters of people who play a special role in revealing the ways of God to humans” (Robbins 1996b:126). In the Old Testament, this would be the life examples of heroes of faith listed in the New Testament (Hebrews 11) as well the covenant community as a whole. Observation of the covenant stipulations, of which Deuteronomy 21:15-17 is a part, could also be regarded as human commitment.

### ***Religious community***

“[H]uman commitment regularly is not simply an individual matter but a matter of participating with other people in activities that nurture and fulfil commitment to divine ways;” hence, “another aspect of the sacred texture of a text is the formation and nurturing of religious community” (Robbins 1996b:127). In the New Testament, this is the church, “the assembly of people (*ekklesia*) called out to worship God and enact obedience to God” (Robbins 1996b:127). In the Old Testament, this is *hd[* (congregation or assembly of people), which basically is the nation of Israel who must live a life worthy of the chosen, holy, and firstborn nation of Yahweh (see below). Marriage and family (see above) is also a sacred institution in the Old Testament. It is in this marriage and family where the sanctity of human sexual relationship is preserved, the sanctity of the firstborn is observed, and above all, godliness is lived and taught. The displacement of the firstborn by a younger son through the approval of Yahweh finds expression in the bestowment of a religious community Israel, the youngest nation, as the firstborn nation above all other older nations (see below).

### ***Ethics***

“Ethics concerns the responsibility of humans to think and act in special ways in both ordinary and extraordinary circumstances. When addressed in the context of religious commitment, the special ways of thinking and acting are motivated by commitment to God” (Robbins 1996b:129). For centuries, many Christian churches do not believe that they could form Christian ethical principles based on the Old Testament. But, as noted and cited several works in Chapter One, many scholars now believe that it is possible to formulate Old Testament ethics. In this vein, Janzen (1994:10) asserts that the Old Testament ethics revolve around the family. From this perspective, we could argue that Deuteronomy 21:15-17 deals with familial ethics. What ethical messages could we then deduce from this text? From our analysis of the text so far, we could conclude that, although the patriarchal culture of the Old Testament is not a blue print for how every society must function, there are positive ethical lessons the modern society could learn from the the custom of primogeniture and patriarchal familial system in the Old Testament. In ancient Israel, great responsibility is placed on the shoulders of the father in the protection and provision of the family as

well as teaching his children the Torah and life vocations by life examples. He must also maintain healthy familial relationships and make sure that all the members of the family do the same. As the firstborn is the second in rank of the family, the primary function of primogeniture would be shouldering and fulfilling these familial responsibilities.

According to the Old Testament, the firstborn is significant and to occupy the firstborn office is a highly esteemed position. Using this as a basis, the narratives establish two great theologies on the firstborn: the sanctity, sacrifice and redemption-replacement of the firstborn and a the displacement of the firstborn by his younger brother as theo-political ideological construct of the Israelite nation-building.

## **4.5.7 Sanctity, sacrifice, and redemption-replacement of the firstborn**

### **4.5.7.1 Sanctity and sacrifice of the firstborns in some ancient societies**

Firstborn sons in some ancient societies suffered because of superstition<sup>103</sup> as well as sanctity and significance associated with them. In some societies a first child born to a woman hitherto barren is devoted to a god for life or occasionally sacrificed to the god.<sup>104</sup> In the latter case the reason is that, by the willing sacrifice of what was granted to by the god and what is obviously his (“fetish-child”

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<sup>103</sup> The sacredness attached to the firstborn is attested in what we may call superstition today. Among the Semang of the Malay Peninsula, the souls of the firstborn children are believed to be young birds newly hatched, offspring of the bird which contains the soul of the mother. These birds obtain souls from Kari, the thunder-god. In the South Sea Islands, where a peculiar sacredness enwraps the firstborn, whether male or female, no one must pass through the door by which he or she enters the father’s house. In Punjab (India Sub-Continent), a lock of hair cut from a firstborn is taken by a barren woman to wizards, in order that the principle of life immanent in the firstborn may be extracted from it. The firstborn is there held to be uncanny, subject to magical influence, and endowed with supernatural power. He can stop hail or thunderstorms, and snakes are torpid before him. When the firstborn is a girl, this is particularly ill-omened. Muslims in North India think that the firstborn can stop excessive rain by certain rites. In North West India it is believed that, if two firstborn persons stand together in a thunderstorm, they will be struck by lightning. In Jamaica it is considered a good omen if the firstborn strikes his right foot against a stone, but ill omen if it is the left foot. In Devon, they believe that the firstborn cannot be overlooked by a witch. In Buckinghamshire, they believe that the firstborn cannot see a ghost. In various parts of England it is considered unlucky if the firstborn is a boy, whereas a girl is lucky (Strahan 1913:31 and works cited there).

<sup>104</sup> Among the Ewe people of western Africa, when a son has been born as a result of prayers to Agbasia, chief of the earth-gods, he is dedicated to the god and called “slave of the earth-gods.” If the first child is a girl, she is married to the priest’s son. In Uganda, parents who prayed to a god for children promised to devote them to him if he granted their request. If it is a girl, as soon as she was old enough she was brought to the temple enclosure and lived there as a vestal attendant on the god. Many Hindu women propitiate the deity by vowing that the firstborn will serve as a water-carrier in the cultic ceremonial procession while other childless Hindu women vowed to offer their firstborns to the holy river Ganges. Among the Syrians a firstborn child is vowed to a saint or to a mosque, but normally he is redeemed with an offering while other times the child was sacrificed. In the *Aitareya Brāhmana*, Hariśchandra prays to Varupa for a son, promising to offer him as a sacrifice. When the child is born, he evades the promise for years, and is finally about to sacrifice a starving Brāhman’s son instead, when the latter is miraculously set free (Strahan 1913:32 and works cited there).

or “god’s child”), the woman will henceforth be fruitful (Strahan 1913:32). Hannah’s prayer in 1 Samuel 1:10-11 for a son and her dedicating Samuel to the Lord (1 Sam 1:27-28) is reminiscent of this belief. In other societies, the firstborns were offered to the gods as cultic sacrifices representing the most valuable offerings which could be made to benefit his kinsmen or propitiate a deity angry with the family or society (Neisser 1957:4-6; Strahan 1913:32).<sup>105</sup> Nearer to ancient Israel, child sacrifice is also attested in certain branches of the Semites, either as a regular custom or on occasion of great danger, and in many cases the firstborn is specifically mentioned as the victim<sup>106</sup> (Schmitz 1992:360; Heider 1992:895-897). There are yet other societies where the firstborn son was regarded as a threat (taboo) because of the belief that the father is reborn in the firstborn son (Strahan 1913:33) which will result in him becoming a rival to his father if he is kept alive (Neisser 1957:3-4).<sup>107</sup>

This sacrificial and killing aspects of the firstborn represent him not as a privileged son protected by the “law” of primogeniture, but a suffering son, offered as sacrifice for his father, family, and for the entire kingdom. Milgrom (1976:338) asserts that elsewhere the status of the firstborn was defined in purely economic terms, but in Israel he held a sacred status. But examples above indicate that the firstborn held sacred status in other parts of the world as well.

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<sup>105</sup> Among the Salish Indians in the British Columbia, the first child was sacrificed to the sun to protect health and prosperity of the entire family. Indians of Florida offered the firstborn children to the sun or to the chief as child of the sun. Among the pre-Inca people of Quito, the sacrifice of the firstborn was a regular custom until it was abolished by the last dynasty. Among the Senjero in eastern Africa, many families must sacrifice their firstborn son, because once, when the seasons were mixed up and fruits would not ripen, the soothsayers advised the king in future to pour forth human blood on a certain pillar (Strahan 1913:32 and works cited there). Ancient Chinese history speaks of a state where it was customary to devour the firstborn son. The aboriginal tribes of New South Wales ate the first child to be born to a family. In the pre-Christian times in Ireland as well as pre-Christian Russia and among some tribes in Abyssinia, firstlings of the flocks and herds and also the first son of the chief of the clan were offered as sacrifices to insure successful crops. The pre-Rome Sabines in Italy observed a great spring festival that involved the sacrifice of the firstborn (Neisser 1957:4-6 and works cited there).

<sup>106</sup> Canaanites and Phoenicians sacrificed their firstborns as burnt offerings. Ancient Greeks sacrificed the eldest son of the king to their deities which was later substituted by a ram (Neisser 1957:5). Mesha, King of Moab, is reported to have sacrificed his eldest son as a burnt-offering on the wall in the face of his defeat (2 Ki 3:27). The analogy of Micah 6:7 and Ezekiel 20:26 suggest that the firstborn was the usual child sacrificed owing to the sacredness attached to him as well as the most dearest and perhaps the most difficult to part with and therefore most calculated to appease an angry god. (Strahan 1913:32-33 and works cited there). But see Schmitz (1992:360 and Heider 1992:895-897) who argue that the evidence of the existence of human sacrifice to the god Molech in Phoenicia is limited and ambiguous.

<sup>107</sup> Ancient Ugandans killed the firstborn son so that he would not take his father’s strength. A Polynesian king or noble either have killed his firstborn son or abdicated in favour of the infant son and ruled as regent because of the belief that the father was reborn in his firstborn son. In Fiji and Corannas in southern Africa, on the son reaching manhood father and son wrestled [Fiji] or fought with stick [Corannas] and if the son won, he took the headship/chieftainship of the family/tribe) because of the belief that on reaching manhood a son became his father’s equal (cf. Neisser 1957:3-4).

#### 4.5.7.2 Sanctity, sacrifice, and redemption-replacement of the firstborn in the Old Testament

The sanctity and significance of both human and animal firstborn is well attested in the Old Testament especially, as noted above, in the exilic and post-exilic texts.<sup>108</sup> The reason for these overwhelming references to the firstborn in the exilic and post-exilic texts could be a conscious effort on the part of the writers and redactors to remind the people of Israel about their special position and relationship with God as his firstborn nation, which is now under a threat. In Deuteronomy 21:17, the firstborn son is significant because he is the first fruit of his father's procreative strength. According to Exodus 13 and parallel text, the sanctity and significant position of the firstborns of Israel is attributed to the Passover event where all the Israelite firstborns were spared when all the Egyptian firstborns were killed. How did ancient Israel respond to the concept of the sanctity and significance of the firstborn? Were they offered as sacrifices as some of their neighbouring nations did?

There is evidence of child sacrifice in ancient Israel. Both the Holiness Code and Deuteronomic Code prohibit the Israelite fathers from offering their children as human sacrifice (Lev 18:21; 20:2-5; Deut 12:31; 18:10). In the days of Judges, Jephthah probably sacrificed his daughter because of his vow (Jdg 11:30). King Solomon built a high place for Molech which is traditionally associated with human sacrifice (1 Ki 11:7). King Ahaz and King Manasseh are reported to have sacrificed their own sons (2 Ki 16:3; 2 Ki 21:6). Prophets Jeremiah and Ezekiel laments about the detestable practice of child sacrifice among the Israelites (Jer 7:31-32; 19:5-6, 11; 32:35; Ezek 16:20-21; 20:25-26, 30:31; 23:36-39). Isaac was to be sacrificed by his father Abraham (Gen 22).<sup>109</sup> Based on these references and the law of redemption of the firstborn (from sacrifice), one could argue that the firstborns were originally offered as sacrifices in ancient Israel. Strahan (1913:36) is in the opinion that numerous skeletons of jar-buried infants found in Palestine suggest the practice of child sacrifice, perhaps their firstborn, in Canaan. The practice probably prevalent among the Hebrews too before their separation from the common Semitic stock.

Against this theory, Milgrom (1990:18; 1976:338) and Brin (1994:173, n. 8; 209), based on a closer look at meanings and nuances of the phrase "give to the Lord" (or other similar meanings), strongly contend that the theory that firstborns were originally and regularly offered as sacrifices in ancient

<sup>108</sup> Cf. Deuteronomy (15:19; 21:15-17), Covenant Code (Exod 22:29-30), Priestly literature (Gen 48:14, 18; Exod 4:22, 23; 11:5; 12:12, 29; 13:1-16; 22:29; Num 3:13, 40-46, 50; 8:16-18; 33:4), Deuteronomistic and Chronicler histories (Jos 6:26; 1 Ki 16:34; 2 Ki 3:27; 1Chr 5:1-2; 26:10; 2 Chr 21:3), Prophets (Jer 31:9; Ezek 20:26; Micah 6:7; Zech 12:10), and Psalms 78:51; 89:27).

<sup>109</sup> See Kessler (2002:74-98) for interesting discussion on the artistic representations of the sacrifice of Isaac in Christian and Jewish traditions. For Muslims, it was Ishmael the firstborn who was to be sacrificed, not Isaac.

Israel is without adequate support. If Milgrom and Brin are right and so if we must take the concepts of “give to the Lord” and redemption as having no basis on the practice of actual sacrifice of the firstborn, then alternative interpretations must be sought.

The sanctity of the firstborn consists of a general statement (Exod 13:1-2; 13:12a; 34:19a; Num 18:15) and a threefold application: to clean animals, unclean animals, and human beings (Exod 13:12b-13; 34:19b-20; Num 18:16-18; cf. Exod 22:28-29 [ET 29-30]; Lev 27:26-27; Deut 15:19-23). According to Milgrom (1990:17; 1976:338), the verbs used in the laws of the human firstborn, “!tñ (give), vdq (consecrate), and ryb[h (transfer) to Yahweh” as well as the use of hdp (“ransom” or “redeem”) clearly indicate that the firstborn male is the property of the Deity. He then concludes that this may be a literary reflex of an ancient rule whereby the firstborn was expected to care for the burial and worship of his deceased parents. For Milgrom (1990:17-18), this is in line with traces of ancestor worship that are found in Mesopotamia. For example, in Nuzi, the firstborn inherits the family gods. In Nippu, he inherits the cultic objects. The *kuduru* curses include lack of a son who will pour libation after death. This practice is also attested in Egypt, among pre-Islamic Arabs, and in Israel (Isa 8:19; cf. Deut 26:14; see also Van der Toorn (1996:206-235; Brin 1994:221). Milgrom (1990:17-18; 1976:338) then concludes that the Bible may have preserved the memory of the firstborn bearing a sacred status, and his replacement by the Levites (Num 3:11-13, 40ff.; 8:14-18) may reflect the establishment of a professional Priestly class.

As already noted above, the Old Testament uses various expressions to describe the firstborn’s relation to God: “given [!tñ] to Yahweh” (Exod 22:28-29), “set apart or transfer [rb[h] to Yahweh” (Exod 13:12a; 34:19), “consecrate [vdq] to Yahweh” (Num 3:13; Deut 15:19; see also Exod 28:38; Lev 22:2; 27:14-16), and “it is the Lord’s” Exod 13:2; Lev 27:26). Brin (1994:215-220, 228-237) argues that the central meaning of the giving of the firstborn to God in these texts is not the offering of the firstborn a sacrifice, but it refers to “an unqualified transferral to the divine realm.” This is vividly illustrated in Hannah’s prayer concerning Samuel: “I will give him to the Lord all the days of his life” (1 Sam 1:11). The same meaning is also implied in the subsequent phrases such as, “I have lent him to the Lord” [whytlavh] (1 Sam 1:28), “for the loan which she lent to the Lord” (1 Sam 2:20); and Levites as “a gift given to the Lord” (Num 18:6), “for they are given to Him” (Num 8:16), “their brothers the Levites I have given to all the service of the sanctuary and the house of God” (1 Chr 6:33).<sup>110</sup> Thus for Brin, these phrases: “give to the Lord,” “consecrate to the Lord,”

<sup>110</sup> Brin’s (1994:215-217) translation.

and “set apart for the Lord” may refer to the divine/cultic service. However, one need not necessarily infer from the case of Samuel or that of the Levites that “give to the Lord” (or similar meanings) necessarily and exclusively implies the cultic service.

Brin’s construct of “an unqualified transferral to the divine realm” seems to have been supported by the absence of any explicit text from which one may clearly infer that all the firstborns of Israel ministered in the holy service. If there was actual sacrifice and actual redemption of human firstborn, redeeming, as Brin (1994:223) rightly notes, would effectively nullify the sanctity of the firstborn (cf. Lev 27). This would be in contradistinction to ancient tradition that recognises the sanctity of the firstborn throughout his life. Thus Brin (1994:222-223) concludes that the redemption<sup>111</sup> clause is a later addition to the original “give to the Lord” clause, probably after the establishment of the organised cult run by specialised professional Levites (Num 3:11-13, 40ff.; 8:14-18; see also Milgrom 1976:338; Sarna 1991:65). From this perspective, the redemption does not need to refer to redemption from sacrifice, but redemption from the “full time” cultic service. Thus, Sarna (1991:67) conjectures that the ceremony *pidyo ha-ben* (redemption of the [firstborn] son) continues until today in Jewish religion.<sup>112</sup>

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<sup>111</sup> There have been speculations concerning the substance used for the redemption of the human firstborn. One could argue that the phrase, “you shall redeem,” implies and requires a substitute animal sacrifice (Alt 1934; Jacobson 1942:304; Campbell Thompson 1971:220, 234; cited in Brin 1994:224-225). Brin (1994:224-225), however, contends that there is no proof of the correctness of such an interpretation. For Brin, there is no specific mention of a lamb for the redemption of human firstborn. The phrase, “you shall redeem,” is general and could refer to any object any sum that their fathers might bring as a gift to the sanctuary, provided that it was reasonable. It is also possible that some would bring the sacrificial lamb as a substitute for the redeemed firstborn human. Later in the Priestly tradition, the redemption of the human firstborn acquires a clear and fixed formulation of five shekels in silver (Num 18:16; cf. Lev 27:6) (see also Milgrom 1976:338). With regard to the redemption of clean and unclean animal, Milgrom (1976:338, who uses the terms “pure” and “impure”) asserts that the Pentateuchal instructions differ. In the case of the clean animal, in the older tradition of JE (Exod 13:12-13; 22:28-29; 34:19), the firstborn is transferred [!tñ, rʏb[h] to Yahweh, that is, sanctified either as an hl [ or ~ʏmlʏ of the priest; Priestly tradition holds that it is the priest’s ~ʏmlʏ (Num 18:17), whereas Deuteronomy maintains it is the owner’s (Deut 15:20) (see also Brin 1994:180-195). For the unclean animal, JE requires that only the ass be ransomed, but the Priestly tradition extends the ransom requirement to all unclean animals (on this Deuteronomy is silent). According to Milgrom (1976:338), the difference may reflect socioeconomic changes. In the earlier (JE’s) time, the ass may have been the only domestically unclean animal (cf. Ibn Ezra on Exod 13:13). The ransom also varies. In JE it is a sheep; however, the Priestly tradition (Lev 27:26-27) stipulates that it is ransomed [hdp] by its worth as evaluated [Škr[b] by the priest, but if the owner redeems it [l aq], he adds one fifth to its value. Milgrom (1976:338) then concludes that since the value of an ass is greater than a sheep, the change from the older tradition of the so-called JE to that of the Priestly tradition reflects a sanctuary practice (see also Brin 1994:200-205 for further discussion on various ways of redeeming the firstlings of unclean animals).

<sup>112</sup> Sarna (1991:67) reports the ceremony of redemption in the present day Judaism as follow: “It is performed on the thirty-first day of life, unless it is a Sabbath or holy day, in which case it is postponed until the following day. It is the father’s duty to have his son redeemed. Should he neglect to do so, the son is obligated to redeem himself on reaching the age of maturity. The son of a Kohen or Levite or of the daughter of a Kohen or Levite married to a Jew is exempt, as is one born by Caesarean section.” A firstborn by Caesarean section is exempt from the redemption requirement as he does not open the womb.

These constructs of Milgrom and Brin are interesting and have good possibilities. For example, Skeletons of jar-buried infants are not necessarily indicative of a regular child (firstborn) sacrifice, as the system could have been used for natural infant mortality as well.<sup>113</sup> References to child sacrifice cited above too are not conclusive indications of a regular child/firstborn sacrifice in ancient Israel, as the authors take great pain in reporting it in a negative term, describing this as the abominable practice of the Canaanites. The tradition of primogeniture also assumes the living firstborns, that is, the firstborns have not been offered as sacrifices, although in many cases the firstborn here may simply refer to the oldest living male brother. Thus in this researcher's opinion, both the Canaanites and Israelites have the same belief concerning the sacredness of the firstborn. However, the Israelites were the first to understand that offering the firstborn as a sacrifice is not the way his sanctity should be observed, mainly since human sacrifice is incompatible with their worship of Yahweh. Thus the observance of the sanctity and significance of the firstborn attained a new level of meaning, linking it to the Exodus event. God's mighty acts in Israel's history become the religio-phenomenological basis for his claim on the firstborn (Tsevat 1975:127). Exodus 13:14-16 thus read:

In the future, when your son asks you 'What is this?' you are to tell him, 'With a mighty hand the Lord brought us out from Egypt, from the land of slavery. When Pharaoh stubbornly refused to release us, the Lord killed all the firstborn in the land of Egypt, from the firstborn of people to the firstborn of animals. That is why I am sacrificing to the Lord the first male offspring of every womb, but all my firstborn sons<sup>114</sup> I redeem.' It will be for a sign on your hand and for frontlets on your forehead, for with a mighty hand the Lord brought us out of Egypt" (NET Bible; see also Num 3:13; 8:17; see Brin 1994:181-184 for further discussion on reasons given for the sanctity of the firstlings and firstborns).

Based on the singling out of the Egyptian firstborns to be killed and the Israelite firstborns to be passed over, we could conclude that the sanctity of the firstborn was already recognised prior to the Passover event. It was not the Passover event that made the firstborns sacred or significant. Rather, the Passover builds on the existing tradition of the sanctity and importance of the firstborn son to accomplish the deliverance purpose. And it is ironic that it was the Egyptian firstborns who suffered and died for the Israelites for their deliverance, not the Israelite firstborns. From this vintage point,

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<sup>113</sup> The traditional Marâ people too buried their infants in jars, but the Marâ people did not practice child sacrifice. Thus, skeletons of jar-buried infants do not necessarily lend a strong support for the existence of child sacrifice in Canaan. Burying infants in jars could simply be the common cultural practice of the Canaanites, and given infant mortality that would be very high, one can expect such numerous jar-buried infants.

<sup>114</sup> As noted earlier, the identification of the firstborn son for cultic purpose is different from that of civil (inheritance and succession) one. For the latter, it is the eldest son of the father, be it in monogamous or polygamous marriage, and he does not have to be the one who opens the womb. But in the former, the firstborn exclusively refers to the firstborn son who opens the womb, that is, the first child and first son of the mother. As the text indicates, "all my firstborn sons I redeem," for cultic purpose it is possible that a polygamous man would have more than one firstborn son who open the wombs of his two or more wives (see also Brin 1994:22).

one could even reconstruct that the Egyptian firstborns suffered for the Israelites and delivered them from the hand of Pharaoh, not Moses or the Israelite firstborns. On this, Tsevat (1975:127) explains that, by passing over the Israelite firstborns, Yahweh did not relinquish his claim on them, but changed the nature of his claim. Tsevat's argument still does not provide adequate explanation.

For Sarna (1991:65), the instruction to Moses to consecrate the firstborn may have been a polemic against such pagan notions of the firstborn sacrifice. According to Sarna (1991:65), "the first-born belongs to God solely by reason of an act of divine will decreed at the time of the Exodus and not on account of any inherent sanctity. Their status is dissociated completely from the then contemporary ideas and practices." Against this, Milgrom (1990:64) asserts that the firstborn, like the priests, were holy (Num 3:9, 13; 8:16), and the Levites, in replacing the firstborn, did not, however, assume their sacred status. What Sarna seems to have overlooked is, as noted above, the killing of the Egyptian firstborns and the sparing of the Israelite firstborns themselves were based on the high esteemed position of the firstborns, which in turn is based on their inherent sanctity, significance, and importance. According to Deuteronomy 21:15-17, the sanctity associated with the firstborn remains with him, perhaps even after his redemption-replacement.

Whatever explanation one advances, all these are manifestations of and support for the sanctity and significance attached to the firstborn. Thus it is logical to conclude that, with the worship of Yahweh in ancient Israel, Yahweh changed the nature of his claim on the firstborn (Tsevat 1975:127). He is no more to be offered as sacrifice like pagans did, but to be offered for religious purpose/cultic service (cf. Samuel). Because of the changing nature of the society coupled with the establishment of the organised cult, it must have become practically impossible for all the firstborns to serve in the cult. Therefore, it is logical and became necessary that they were replaced by the Levites.

There is another irony facing interpreters on the issue of the firstborn. If consistency must have the day, as noted above, the redemption-replacement would effectively nullify the sanctity of the firstborn. But according to Deuteronomy 21:15-17, the sanctity associated with the firstborn remains with him, possibly even after his redemption-replacement. Based on these, in this researcher's opinion, the sanctity and significance of the firstborn in the Old Testament should be best understood in terms of an open-ended theological emphasis, which must be interpreted, re-interpreted, applied, and re-applied according to the changing societies.

In the final analysis, a father's recognition of his firstborn in Deuteronomy 21:17 may be theologically likened to God's recognition of Israel, his firstborn nation. In Isaiah 61:9, when God has redeemed Israel, they will be acknowledged by the nations as a people whom God has blessed. In Isaiah 63:16, Israel has not been acknowledged by his ancestors, only God is his Father. In one case God is the subject (Jer 24:5). It carries the sense of God's special regard for the exiles. God will recognise the exiled Israel again, for he is his firstborn son.

Wright (1992:765) rightly writes that the consecration and redemption of the firstborn right (Exod 13:2, 12–15; 22:28; 34:1–20; Num 3:11–13; 8:16–18; and 18:15) “is important as a link between family life in Israel and the national relationship with Yahweh.” It has two significant theological meanings: First, based on the sparing of the firstborn of Israel while the firstborn of Egypt had been slain, the consecration of the firstborn was “a symbolic declaration of Israel's complete belonging to Yahweh ... And since the firstborn, like the firstfruits, represented the whole of which they were part, this was the basis of the sanctification of the nation as a whole (cf. Jer 2:3)” (Wright 1992:765). The second theological meaning of the firstborn right, according to Wright (1992:765), was a declaration of the continuity and permanence of Israel's relationship with God.

By claiming the firstborn in each family, God was claiming the whole succeeding generation as his own. The birth of the first son was a very significant event in the life of any family, since it ensured the continuation of the family into the next generation. The consecration of that son to Yahweh symbolically ensured the continuation of the covenant relationship into that generation.

Like the Passover rite, to which the firstborn right is closely related in the text (note the parallelism of the two rites in Exod 13:9 and 16), the rite of the firstborn serves as a “constant memorial of the foundational redemptive events of the Exodus. And also like the Passover, it was within the family that this memorial and sign was to be perpetuated” (Wright (1992:765).

For Brin (1994:262-263), the theological phenomenon is the main difference between Israel and the Ancient Near East on primogeniture. In the Ancient Near East the firstborn birthright primarily, though not exclusively, bore an economic character. It was seen as the social status of the one who was the chief among his brothers, and who was destined to fill the place of the father after his death. According to this view, the birthright is not conceived as stemming from a special divine revelation, nor was the firstborn considered to be holy. As a result, the father's power to manipulate changes in the order of hegemony was far greater in the Ancient Near East than in Israel (Brin 1994:263). Asserting that, by its origin of the slaying of the firstborns of Egypt but passing over the firstborns

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of Israel at the eve of the Exodus, the firstborn birthright in Israel was an institution of a religious nature, Brin (1994:262) concludes:

The first-born were seen as holy to God, and a divine aura rested upon the first-born in general. As a result, it was inconceivable that a status of this sort, which was conveyed as the result of a natural fact, should be transformed into an acquired status. It would appear that this view persisted, even though over the course of time the outlook regarding the sanctity of the first-born changed, and even became completely obscured. Here, the biblical solution emerged: it is impossible for an outsider to enjoy the title of first-born, even one to whom the privileges of the birthright have been transferred from the natural firstborn.

Above we have studied that, based on his inherent sanctity and significance, Deuteronomy (21:15-17) accords the firstborn the position of the prime-heir. But in narratives, the firstborns are displaced in favour of younger sons over and over again at the intervention and legitimation of God himself. This is another ideological power in play. If it is God who legitimates the displacement of the firstborn, who then can criticise him? The displacement of the firstborn by his younger brother also projects the future status of Israel as a nation that would displace other nations. Thus theology, politics, and ideology, all three are infused in the firstborn displacement narratives. It is a theology because it is God himself who changes nature and culture. It is about rejection and election by God. It is about politics because it concerns the Israelite nation-building based on the Abraham-Isaac-Jacob patrilineal line. It is an ideology as well because it is a power play whereby God is reported to have sided with the powerful and dominant voice. We may call this “primogeniture and theo-political ideology of the Israelite nation-building.” In what follows, we will motivate it in more detail.

#### **4.5.8 Primogeniture and theo-political ideology of the Israelite nation-building**

The hypothesis for this analysis is as follows: The narratives’ displacement of the firstborn in favour of a younger son is a theo-political ideological construct of the Israelite nation-building by the authors of the narratives, which finds expression in Yahweh’s bestowment of Israel, the youngest nation, as the firstborn nation above all other older nations. In testing this hypothesis, we shall first attempt to read evidence of the presence of theo-political ideologies in the Old Testament. This will serve as the foundation for understanding how the narrative authors manipulate and appropriate primogeniture tradition to advance their theo-political ideologies of the Israelite nation-building.

#### 4.5.8.1 Theo-political ideologies in the Old Testament

Many scholars would agree that the Old Testament contains theology and ethics, but some would be uncomfortable to say that it contains ideologies, especially political ideologies. However, it should be understood that as much as the Old Testament contains religion (theology), ethics, history, sociology, economics, gender, literature, etc, it also contains politics. Remove political ideological aspects from the Old Testament, then the Old Testament would be a completely different kind of testament.<sup>115</sup> Martin Sicker (1999:251-255) asserts that the Pentateuch is a political book and, therefore, must be read politically. Like any other political treatise, the Pentateuch addresses the fundamental political questions of societal organisation and governance, authority and obligation as well as the establishment of ideological framework within which a unique society and civilisation might emerge and flourish. In so doing, Abraham and his descendants were to be the progenitors of the model society and civilisation. Although Sicker rightly acknowledges that no clear distinction can be made between the religious and the secular for the biblical worldview, he is incorrect in his assertion that “there is very little doctrinal theology to be found in the Pentateuch..., the primary subject of the work is man rather than God..., there is little if anything in the Mosaic canon that reasonably lends itself to such theological interpretations” (Sicker 1999:251). To melt both religion and politics of the Pentateuch into a political pot would be doing injustice to the Pentateuch texts which are theological works *par excellence* of Moses, Deuteronomistic and Priestly theologians.

Before we further discuss why the Old Testament is a theo-political ideological book, it is necessary to first explain what Old Testament theo-political ideology is not. The theo-political ideology of the Old Testament is not exactly similar to modern “political theology”,<sup>116</sup> “liberation theology”,<sup>117</sup> or

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<sup>115</sup> The entire Protestant Christian Bible, as we have it today, may be divided into three major parts. The first part is from Genesis chapter one to eleven. This section deals with the primeval history including the history of the entire human race (nations) of the earth, gradually moving towards a particular nation. The second part is Genesis chapter twelve to the end of Malachi which deals exclusively with a particular nation Israel. The third part is the New Testament. Most theo-political ideological texts are found in the second part of the Bible, Genesis 12 to the end of Malachi.

<sup>116</sup> Political theology is “the name for certain widely differing agendas which could be subsumed to ethics as well as to ideology (the latter being a system of ideas intended to legitimate particular interests, not to reveal the truth of a hitherto often hidden reality... Enlightened political theology tries to assure the authority of reason by a critical analysis or even dissection of biblical narrative... A secular type of political theology is centred on the question of authority and uses certain biblical metaphors as a means to legitimation” (Frey 1994:56, 64). In practical levels, it is a “theology that focuses on the political implications which Christian has for the under-privileged and socially oppressed and on the need for confessing Christians to involve themselves in politics with a view to changing the political structures” (Deist 1984:195).

<sup>117</sup> Liberation theology is an “interpretation of theology from the viewpoint of the politically and socially oppressed according to which God is by nature on the side of the oppressed (cf., the Exodus event, Isa 61:1-3; Lk 1:46ff) and encourages them to liberate themselves from the oppressing powers in order to live as free human beings” (Deist

“political ethics”<sup>118</sup> although they are functionally related and there are some relations and overlap. Theo-political ideology is neither a “theologisation”<sup>119</sup> of secular political movements of Israel, doing “politically correct”<sup>120</sup> things, nor a “socio-historical analysis of the Bible”,<sup>121</sup> although they are related.

The hypothesis of the Old Testament as a theo-political<sup>122</sup> ideological book refers to two phenomena. On the one hand, it refers to the assertion that the political movements of Israel throughout its history “have been influenced and even dictated by the deep belief in the all-embracing rule and providence of God” (Reventlow, Hoffman, & Uffenheimer 1994:7). In so doing, the Israelite leaders were to seek his direction whenever a political decision was to be taken (see also Hoffman 1994a:86). They were also to do their daily politics according to the will and ways of God. On the other, it refers to the way theology and national political movements/changes influence each other.

Reading the Old Testament theo-politically is not a new phenomenon. In antiquity, Josephus (*Against Apion* 2.181) asserted that Moses declared piety to be the leading principle of his state and thus taught the whole people to hold the same opinions about the godhead and to keep the same divine commands (see Amir 1994:25). Ambrose, Augustine and Thomas Aquinas (see Reventlow

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1984:143). In so doing, the liberation theology largely concentrates its use of the Bible on narratives where God’s action in history is narrated (see Frey 1994:64).

<sup>118</sup> Political ethics and secular political theology are some how related. Political ethics “tries to extract certain motives from the Bible and to extend them in certain topics, especially in liberal politics” (Frey 1994:64). For political ethics, “the Bible is a source of personal certitude” (Frey 1994:64). For Truts Rendtorff (see Frey 1994:56-57), political ethics, not political theology, is the only adequate conception for the modern world.

<sup>119</sup> Theologisation is the process by which an original secular custom, tradition, or story was reinterpreted and reworked to give it a theological meaning. For example, the Passover ritual, originally probably an apotropaic rite was reworked into a theologically significant event in the Israelite festival calendar (Deist 1984:258). Apotropaism believes that ritual acts, incantations or amulets can ward off evil (Deist 1984:18). Theo-political ideology of the Old Testament is not a theologisation of original secular traditions of the Israelite political movements, if there are any, to give them theological meanings.

<sup>120</sup> The conceptual phrase, “politically correct”, refers to a language or behaviour that deliberately tries to avoid offending particular groups of people.

<sup>121</sup> Socio-historical analysis refers to the historical movement of a group or people from the point of view of their societal life (customs, beliefs, mores, etc) (Deist 1984:239).

<sup>122</sup> The hyphenated *theo-* refers to theological-ethical corpus of the Old Testament. *Political* refers to the national (domestic) political movement as well as foreign relation (affairs). National political movement includes building a civilised, great, independent, and secure Israelite society and nation, which process includes promulgation and implementation of laws; appointment of kings (and succession to the throne), officials, judges, priests and prophets; establishment of military, sanctioning legitimate violence (declaring war, serving capital punishment, etc.), etc. Foreign affairs include Israel’s relationship with and influence on its neighbouring countries including its relation as a vassal kingdom to the suzerain kingdom.

1994:163-175), too spoke of a “just war” Plato’s ideal *Republic* was not an aristocracy or democracy, but a society of equals guided by the idea of the Good.<sup>123</sup> In our own time, theo-political reading of the Old Testament generated considerable scholarly interests during the last three decades.<sup>124</sup> However, theo-political reading of the Bible during this period was overshadowed by the “black theology” of South Africa and North America, the liberation theology of Latin America, and feminist- liberationist theology of the West. This seemed to have created counter hermeneutics of suspicion. In some quarters of Christianity and biblical scholarship, any kind of political reading of the Bible is viewed with suspicion. But that should not be the case. If we accept the Old Testament as Scriptures, we must also accept its political contents as Scriptures. The following are some of the examples of the overwhelming contents of theo-political ideologies in the Old Testament:

### ***Old Testament uses theo- political terminologies***

Elazar’s (2000:1084) translation of *edah* [hdy[]] as “Jewish commonwealth” is debatable. However, despite of this, he gives a good summary of how the Old Testament is rich in theo-political terminologies:

The kith (*moledet*) of tribes (*shevatim*) descended from Abraham, Isaac, and Jacob, which God raised up to be a nation (*goy*), became the Jewish people (*Am Yisrael*) through its covenant (*brit*) with God, which, in turn, laid the basis for the establishment of the Jewish commonwealth (*edah*) under divine sovereignty (*malkhut shamayim*), bound by the divine constitutional teaching (*Torah*). The *am* so created must live as a community of equals (*kahal*), whose locus is the land of Israel (*Eretz Yisrael*), under the rule of law (*hukah, hok*) that

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<sup>123</sup> Commenting on Plato’s ideal *Republic*, Amir (1994:24) notes that “in his late book *Laws* Plato repeats that the very names ‘aristocracy’, ‘democracy’ and so on designate those parts of society that dominate the other parts. These systems of state organisation therefore cannot be acceptable, for a genuine must be a unity and not a society divided between a dominating and subjugated class. A correct form of communal life would not have the name of the *demos* or the *aristoi* who form the ruling class, but the name of the god who maintains a just rule over the whole society.” He also suggests that Plato’s mythic depiction of a god, Kronos, who once, long ago, ruled over a happy society, is none other than a *theocratic* type of government in modern sense.

<sup>124</sup> In 1975 the *Radical Religion* collectively published a special issue of the journal on ‘Class Origins and Class Readings of the Bible’ (*Radical Religion*, Vol. II, Nos. 2-3). In 1976, it was expanded into a Reader under the title, *The Bible and Liberation: Political and Social Hermeneutics* (edited by Norman K Gottwald and Antoinette C Wire), revised and published again in 1993 (again edited by Norman K Gottwald with a new co-editor Richard A Horsley). Contributors include: Mottu, Gottwald, Coote and Coote, Steinberg, and Sheppard. In 1994, materials of the symposium held in the University of Tel Aviv in December 1985 were published in the JTSOTSS 171 entitled *Politics and Theopolitics in the Bible and Postbiblical Literature* (edited by Reventlow, Hoffman, and Uffenheimer). Contributors include: Amir, Amit, Anbar, Falk, Frey, Hoffman, Polak, Rakover, Reventlow, and Uffenheimer. The Society of Biblical Literature attributes the entire volume of *Semeia* 66 (1994) on *Ethics and Politics in the Hebrew Bible*. Contributors on political parts of the essays include: Crüsemann, Frick, Knight, Lemche, and Schulte. In addition to these collective publications, there are also a number of individual publications that have come out in recent years. For example, Gottwald (1964, 2001), Mouw (1976), Ahlstrom (1982), Reventlow (1984), Marshall (1984), Frick (1985), Forester (1988), Berlin (1996), Weisman (1998), Kastfelt (2003).

applies to every citizen (*ezrah*), defined as a partner to the covenant (*ben-brit*). All citizens are linked to their neighbours (*rea*) by covenant obligation (*hesed*).

### ***Old Testament portrays Israel as a nation with theo-politically power vested leaders***

As a political entity, following changes in national political situation, the Old Testament's portrait of the type of government and its political power vested leadership also changed. For the Hexateuch, Israel as Abraham-Isaac-Jacob בְּאֵימֹתַיִם was a government by God through the patriarchs Abraham, Isaac, and Jacob. The Exodus assembly and conquering army was government by God through Prophet Moses and his successors Joshua and Caleb. For the Prophets Israel was governed by God through judges and kings. The Writings (Ezra-Nehemiah) alluded to a future government of Israel ruled by God through the priesthood based on the Temple in Jerusalem (Neusner 2000:1070). There was a statement that was repeatedly emphasised in the book of Judges, "In those days there was no king in Israel; everyone did as he pleased" (Tanakh) (Jdg 17:6; 18:1; 19:1; 21:25; cf. Deut 12:8). This is none other than a manifestation of a political struggle and power vacuum in the history of Israel.<sup>125</sup>

It must also be noted that power, be it religious or political power, is very vulnerable to abuse. Even a godly man like David in the Old Testament was no exception to this vulnerability. According to the law, adulterers and murderers must be stoned to death (Lev 20:10; Deut 22:22; Exod 21:12-14; Num 35:16-21). But why were not King David and Bathsheba put to death for their adulterous sexual union and why was not David killed for ordering the murder of innocent Uriah? (2 Sam 11:1-27). After David said, "I have sinned against the Lord" (2 Sam 12:13), Samuel told David that he was not going to die (2 Sam 12:14). What did Samuel mean when he said this? Did he say that

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<sup>125</sup> See also Elazar (2000:1077) who asserts that since the times of their formative years (3300 or perhaps 500 more years), the Jews have comprised a tribal polity, an enslaved caste, a simple agrarian republic, a state that was also a regional power, a community in exile, an imperial province, a vassal state, a revolutionary polity, a congeries of dispersed communities bound together by a common law, a set of co-religionists, and ethnic group, and, today, a modern state. Neusner (2000:1070-1071) identifies in the Scriptures four types of sanctions to the generative questions of politics as power – who has power, whence does the power derive, and how may they use that power to commit legitimate violence – each deriving from a distinct institution of political power: *What God and the heavenly court can do to people?* This sanction deals with God's place in the institutionalisation and execution of legitimate violence. Although God is never asked to join in making specific decisions effecting policy in the everyday politics of the state, deliberate violation of certain rules provokes God's or the heavenly court's direct intervention. Thus obedience to the law clearly represents submission to God in heaven. *What can the early court do to people?* This type of sanction embodies the legitimate application of the worldly and physical kinds of violence of which political theory ordinarily speaks. The heavenly court and the earthly court impose precisely the same sanctions for the same crimes or sins. The earthly court therefore forms down here the exact replica and counterpart, within a single system of power, of the heavenly court up there. *What can the cult do to the people?* The cult through its requirements can deprive people of their property as legitimately as can a court. *Conformity with consensus – self imposed sanctions:* Here the issue is whose consensus and defined by whom?

because David has repented, he would not be put to death? But the law does not provide a way out for adulterers and murderers. Regardless of whether one has repented or not, adulterers and murderer must be put to death. One wonders, were it Uriah who committed adultery with one of David's wives, what would have happened to him? It is doubtful that even if he repented, his repentance would have saved his life. Therefore, this story must be read as theo-politics at its worst, that is, God's forgiveness being made more easily and readily available for the powerful.

The concept and desirability of living as a theo-political nation is well attested in several places of the Old Testament. Indeed one could argue that this is a thread running through many of the Old Testament books. Abraham was to leave Ur (Gen 12:1-6) and later the Israelites Egypt (Exod 12:31-42) for a new nation of their own in the Promised Land where they would live as a holy and model nation. Losing nationhood was the epitome of shame during the exile. They longed for becoming a nation again (see Carruthers 2006:480-496 for discussion on the Bible and modern nationalism [nation-state]).

For the Israelites, their process of building a nation was never purely secular in nature. From its inception, divine legitimation was always sought.<sup>126</sup> In many cases it is like a chicken and egg puzzle. It is difficult to determine whether a text is a theologically motivated political ideological text or politically motivated theological ideological text. Both are inseparably embedded in the texts. For example, the whole concept of land attained an eschatological dimension in the Rabbinic literature as a result of that dreaded exilic experience. The inheritance of the real physical land was reinterpreted as inheriting a share in the unchangeable world to come that can be attained only by holiness (see Weinfeld 1993:218-219 and literature cited there). Many differences between 1 & 2 Kings and 1 & 2 Chronicles, the former concerned with historical and the latter possibly the "identity formation" of the Israelites during the exilic and post-exilic periods, must also be read against the backdrop of national political changes in the Israelite history. Identity formation is part and parcel of a political movement of nation-building. Jonker (2007:1), studying the intersection of certain thematic complexes in the Chronicle's account of Judahite history (2 Chr 10-36) in order to show how this intersection relates to the process of identity formation in the Books of Chronicles, concludes that "the intersection of these themes stand in service of a process of identity formation during the time of Persian imperial rule." In the same vein, it is against the background of political

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<sup>126</sup> See also Neusner (2000:1070) Elazar (2000:1077) who assert that from its very root, Judaism has been a theo-political phenomenon, that is, religion and politics go hand in hand in Judaism from its root (ancient Israel) to Talmudic, medieval, and modern times.

movements/changes of Israel that narratives' displacement of the firstborn by younger sons must be read and understood.

It has been fully established that the Old Testament covenant is structured after that of the Ancient Near East, especially Hittite, royal political treaties (see Weinfeld 1972:59-157). The Old Testament entails theo-political obligations between God and the people as well as between individuals (Dearman 1992:134-142). Sicker (1999:253-255) rightly asserts that if there is no political obligation and will for adherence to the agreements in the covenant, its enactment and promulgation would be quite pointless.<sup>127</sup> Therefore, it is necessary for the Israelites to bind themselves with the political obligation as a nation for the successful implementation of the covenant (Deut 29:9-15). With Yahweh making a covenant with the Israelites on Mount Sinai, the Exodus generation of Israel as a community of tribes was transformed into a national political body. Covenant stipulations or the Torah is in essence the divine constitution for the nation Israel, which are "comprehensive and immutable, but properly constituted human agency has been granted broad powers of interpretation that, when used fully, are essentially legislative *de facto*" (Elazar 2000:1803 italics his). It must also be, however, noted that while many nations of the world today consciously or unconsciously use the Decalogue as a good foundation for their good civil and criminal laws, the Bible could also be distortedly used as "a profoundly disturbing political text" (Corringe 2006:429) to support one's ideology.

### ***Old Testament legitimates warfare and punishment of criminals***

A religious body going to war and punishing criminals, even serving capital punishment, is incomprehensible unless these texts are read against the backdrop of Israel as a political state that needs to secure its borders and maintain law and order (Dearman 1992:141-142).

### ***Old Testament is concerned about Israel's relation to other nations (foreign affairs)***

In addition to prosperity, posterity and security for themselves, the purpose of the Israelites building a nation of their own includes a wider theo-political scope. Israel is to be a light to other nations (Gen 12:1-3). She is to stand tall among other (Gentile) nations as a radically different nation – a

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<sup>127</sup> Commenting on the type of political obligation by which the Israelites bound themselves together, Sicker (1999:254-255) observes that patriarchal tribal politics was the basis for the Israelites' obligatory adherence to the covenant agreements: "The covenant between Moses and the elders is not binding on future generations in and of itself. It is effectively renewed in each generation through the immediate patriarchal relationship between parent and child, which represents a continuous link throughout the generations back to the original covenant between Moses and the tribal patriarchs of Israel."

different religion, a different legal (constitutional) system (Torah), different kings (Deut 17:14-20), different judges/officials (Deut 16:18-17:13; ), different priests (Deut 18:1-8), different prophets (18:14-22) and different citizens (who observe the Decalogue as their moral standard) in order that other nations too may come to see the goodness of the theo-political model of Israel and adapt it for their own use. In addition, the Old Testament also prospectively and retrospectively speaks about Israel's relation to other nations both in times of peace and war. As indicated above, in this international scene as well, religion and politics are integrated – it is Israel's international theo-political ideology (for further discussion on the Bible and politics, see Corringe 2006:414-431).

#### **4.5.8.2 Narratives' displacement of the firstborn in favour of a younger son as a theo-political ideology of the Israelite nation-building**

As discussed in the previous chapters and the preceding sections of the present chapter, the Deuteronomic law reaffirmed the tradition of primogeniture and prohibits an Israelite father from displacing his actual firstborn son in favour of any of his younger sons. But in narratives, we often read about fathers' violations of this law. Firstborns were displaced by their younger brothers, in most cases through alleged divine initiatives or sanctions. Abel was favoured over Cain (Gen 4:3-5) and later Seth over Abel (Gen 5 traces Adam's line through Seth), Isaac over Ishmael (Gen 21:1-14; 25:5), Jacob over Esau (Gen 25:19-34; 27:1-40), Judah over Reuben (Gen 49:9-12, especially verse 8 where Judah is made the leader of the Jacobite nation), Joseph over Reuben and all other older brothers (Jacob gives Joseph a double portion inheritance by making the latter's two sons equal to the rest of the former's sons [Gen 48:5] while 1 Chr 5:2 clearly states that the rights of the firstborn belonged to Joseph), Ephraim over Manasseh (Gen 48:17-20), and Solomon was favoured over his older brothers (1 Ki 1:5-53; 2:1, 15) to succeed their father David as king. In two cases of polygamous marriages, it was the favoured wives who influenced the decision making – Sarah on behalf of Isaac and Bathsheba on behalf of Solomon. In one case of monogamous marriage the mother herself favoured the younger son – Rachel favoured Jacob over his twin brother Esau. In fact, Isaac was the only known monogamous patriarch. This is a case in point that even in a monogamous marriage; the firstborn could still be displaced by a younger son.

The hypothesis of this section is a reverse argument of that of Carmichael's hypothesis. To recapitulate, Carmichael (1974, 1979, 1985, and 2001, especially 1985) argues that the laws in Deuteronomy do not address actual problems in life, nor do these laws govern real life situations, they are pieces of literature that address situations in Israel's (narratives) literature. In this researcher's opinion, the primogeniture tradition either in written or oral form is older than the

narrative texts that deal with primogeniture. Based on the apologetic tones of the narratives whenever the primogeniture “law” is violated, we can safely say that narratives knew about the “law” of primogeniture. In so doing, narratives consciously report the displacement of the firstborn by a younger brother as a theo-political ideological construct of the Israelite nation-building which finds expression in Yahweh’s bestowment of Israel as the firstborn nation above all other older nations. In the following, we shall test this hypothesis in the Ishmael-Isaac narratives (Gen 16:7-16; 17; 21; 25), Esau-Jacob narratives (Gen 25:19-34; 27; 32-33, 36), Reuben-Joseph narratives (Gen 30:14-16; 35:22; 37:19-25, 29-30; 42:21-22, 37), Manasseh-Ephraim narratives (Gen 41:50-52; 48:5, 8-10), and Adonijah-Solomon narratives (1 Ki 1:5-53; 2:1, 15).

### *Ishmael-Isaac narratives*

Genesis 16 begins the Ishmael-Isaac cycle with Hagar, Sarah’s maid, giving birth to a son who was named Ishmael to be the surrogate son of Sarah and Abraham<sup>128</sup> as well as the prophecy for the future of Ishmael. His name  $\text{I}a[mv\text{y}]$  means “God who hears”, a much more solemn and theophoric name compared with the name Isaac  $[qxc\text{y}]$  which means “he laughs” (Gen 21:3). The angel of the Lord’s prophecy for Ishmael includes hostility towards his brothers (other children of Abraham in v 12). The phrase at the end of the verse,  $\text{!kv\text{y}} \text{w\text{y}xa-l k \text{y}mp-l [w}$ , could also be translated as “he will live to the east of his brothers.” Verse 14 notes that the Beer Lahai Roi well was *still there* during the time of the writing of this text. Chapter 17 reports the prophecy of the birth of Isaac, Abraham’s plea for Ishmael to be his heir, Yahweh’s choice of Isaac over Ishmael to be the heir of Abrahamic nation. The chapter is also deliberate in Yahweh’s blessings of posterity for Ishmael (father of twelve rulers), name and power (he will become a great nation; see also 21:18), and the circumcision of Ishmael, along with his father Abraham and all the male members of his household. Circumcision in chapter 17 is a confirmation and sign of God’s covenant with Abraham in chapter 15. In this sense Ishmael is included in God’s covenant with Abraham. Chapter 21 narrates the birth of Isaac, rivalry between the two sons and their mothers, the prevalence of Sarah-Isaac over Hagar-Ishmael, Yahweh’s reaffirmation of Isaac as the heir of the Abrahamic nation as well as the blessing of Ishmael to become a great nation because he too is the offspring of Abraham, and the sending

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<sup>128</sup> The custom is attested in the Ancient Near East texts. The Laws of Hamurabi (§146) stipulates that a priestess of the *naditum* rank, who was free to marry but not to bear children, may give her husband a slave girl in order to provide him with a son. If the slave girl who now have become the concubine then tries to arrogate to herself a position of equality with her mistress, the wife shall demote her to her former status of slave; but she may not sell her. A Nuzi adoption document also reads: “If Gilimninu bears children, Shennima shall not take another wife. But if Gilimninu fails to hear children, Gilimninu shall get for Shennima a woman from the Lullu country (that is, a slave girl) as a concubine. In that case, Gilimninu herself shall have authority over the offspring” (Speiser 1964:120-121; see also Kidner 1967:126).

away of Hagar and Ishmael in order that Ishmael would not share in the inheritance of the Abrahamic estate. Chapter 25 is the climax of the narrative in terms of primogeniture. The firstborn Ishmael had already been displaced. But there are still other sons of Abraham by Keturah. Abraham is reported to have sent away all his other sons, the half-brothers of Isaac, so that Isaac could be made the chief heir: “Abraham left everything he owned to Isaac. But while he was still living, he gave gifts to the sons of his concubines and sent them away from his son Isaac to the land of the east” (25:5-6). The chapter also lists the descendants of Ishmael and Isaac and introduces the Esau-Jacob cycle.

The setting of the Ishmael-Isaac narrative is Mesopotamia. As discussed in Chapter Two, the tradition of primogeniture was already known and practised in Mesopotamia. Through surrogate, Ishmael became the legitimate firstborn of Abraham and Sarah (Gen 16:15; 17:11, 23, 25f; 25:9, 12). Once a son born of such a slave-master union is legitimated by the father calling his son, “my son,” (cf. LL §25; LH §170, etc), the son was accorded the legitimate right of inheritance from his father’s estate. Genesis 17:23-27 clearly makes Ishmael the partaker of the Abrahamic Covenant through circumcision together with his father. Thus his status as the firstborn of Abraham automatically assures the right of prime heirship even after the birth of Isaac. But Sarah changed her mind and was to abandon her surrogated son, Ishmael, for her younger and biological son, Isaac. There have been discussions on Genesis 21:9. The text reads: “But Sarah saw that the son whom Hagar the Egyptian had borne to Abraham was mocking” (NIV). The text suggests this act as the justification of Sarah prompting Abraham to expel Hagar and Ishmael (Gen 21:10). “Mocking” (Piel of  $\text{QXC}$ ), another play on the name Isaac, implies a negative verdict on Ishmael’s behaviour. The LXX and Vulgate add an object and translate: “Sarah saw the son of Hagar... playing with Isaac her son.” Following this rendering, Skinner (1910:322) argues that “it is the spectacle of the two young children playing together, innocent of social distinctions, that excites Sarah’s maternal jealousy and prompts her cruel demand” (see also commentaries on the text by Speiser 1964; Westermann 1984-1987). But Wenham (1994:82) strongly contends that the tone of the passage clearly implies the disapproval of the play by its observer.<sup>129</sup>

Whatever motive there may be, one thing which is clear is that Sarah wants Isaac, her biological son, to become the firstborn of Abraham. Sarah’s real concern is not Ishmael’s behaviour, but the possibility that the son of the slave woman other than her own son would become the prime heir of

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<sup>129</sup> Based on the different meanings and plays of this word, the Midrash suggested the mocking here might involve idolatry (Exod 32:6), sexual immorality (Gen 39:14, 17), or even murder (2 Sam 2:14). But this interpretation is unlikely (Wenham 1994:82).

Abraham (Hamilton 1995:80). But Sarah understands that from the time she handed Hagar over to Abraham to be his wife, the authority over Hagar have passed over to Abraham (Tollington 2005:188). So she could not drive away Hagar by herself anymore. In order to drive away Hagar and her son Ishmael, Sarah finds an escape clause in the ancient law. A clause in the Laws of Lipit-Ishtar (LL §25) stipulates that the father may grant freedom to the slave woman and the children she bore him. In such a case, the children of the slave woman forfeit their inheritance share of their paternal estate (cf. Jdg 11:1-3). According Sarna (1989:145), Sarah asked Abraham to exercise this legal right (Gen 21:10, cf. 25:6). However, “fatherly love and moral considerations deter Abraham from giving his consent” (Gen 21:11; Sarna 1989:145). Then comes Yahweh’s approval of Sarah’s suggestion and Abraham had to consent.<sup>130</sup> Sarah’s primary interest might have been to make Isaac the sole heir of Abraham’s estate. But Yahweh had a bigger plan – the future Abrahamic nation (Gen 21:12-13). This is rhetoric of a theo-political ideology of the Israelite nation-building *par excellence*.

Temporally, the blessings Ishmael received from Yahweh were no less than that of the blessings Isaac received. Ishmael too would become the father of the rulers of twelve nations (17:20). If that is the case, we may ask about the advantage of belonging to the Abrahamic nation. Sarna (1989:125) asserts that, although Ishmael too receives God’s blessing and his own destiny to pursue, he is not to be Abraham’s spiritual heir. Janzen (1993:52-53) is in the opinion that belonging to such a community of spiritual Abraham entails great meaning if the vocation of that community is properly understood:

In a world where the actual conditions and conventions of nature and society often frustrate God’s purpose for the whole creation, the call to belong to the community of Abraham and Sarah is a call to undergo God’s transforming wisdom and power. Conventional power is challenged to reconceive itself; and conventional barrenness is promised fruitfulness. As the firstborn, and through the social convention of a surrogate wife, Ishmael fulfils God’s purpose through predictable processes of nature and society. As the secondborn, and through God’s laughing reversals, Isaac fulfils God’s redemptive purpose in their unpredictable faithfulness.

Genesis 25 records the lists of Abraham’s descendants through his three wives (Hagar, Sarah, and Keturah). Ishmael’s descendants are listed in verses 12-18 (for identifications of all these

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<sup>130</sup> Abraham then took three measures to make Isaac the firstborn (Gen 25:5-6): (1) It was before the promulgation of the primogeniture legislation (Deut 21:15-17) and a time fathers’ have full authority over their household. So although there was the primogeniture tradition, a father could violate the tradition in favour of his younger son. Abraham chose Isaac to succeed him. (2) Ishmael was already displaced. But there were still sons born to Abraham by Keturah; they could contest against Isaac. Their future claims of succession were compensated with gifts. Or the sending away could be an evidence, like the case with Ishmael, that Abraham did not make Keturah’s sons his legitimate sons (see LH §171 and MAL §46 discussed in chapter three). (3) He physically separated Keturah’s sons from Isaac to eliminate the resurgence of the contest to the heirship of the Abrahamic nation. This development is reminiscent of Abraham’s earlier separation from his nephew Lot (Gen 13:11; cf. Sarna 1989:170).

tribes/descendants, see Sarna 1989:170-177). Ishmael and Isaac met again at the death and burial of their father Abraham (Gen 25:8-10). As noted above, it was the duty of sons to bury their father. Thus the rhetorical emphasis here could be that Ishmael (Arabs) and Isaac (Israelites) are indeed brothers.<sup>131</sup> Assigning the Ishmael-Isaac texts as P, especially chapter 17, Syrén (1993:15-65 and literature cited there), asserts that Ishmael represents a postexilic ‘peoples of the land’ with whom the returned Israelites (descendants of Isaac) had to live side by side. Therefore, Ishmael texts are postexilic Priestly texts that serve as rhetorical examples for resolving the issue of national purity. The integrity of the land, religion and the people – all had to be protected. In so doing, the writer of Genesis carefully portrayed Ishmael as a paradoxical figure: tolerated and not tolerated; cast out, but not totally. Following the example of Abraham, true Israelites could not accept the presence of foreigners in their homes and families, even as wives. However, by giving Ishmael to Abraham and by blessing the son’s future, God had shown that there was a place in his plans for the ‘peoples of the land’, who by birth (as in the case of non-exiled Jews) or conversion could ask to be accepted into the community of the Israelite nation.

Syrén’s post-exilic dating of the Ishmael-Isaac narrative texts is interesting. However, in this researcher’s opinion, one could also present a case for a pre-exilic early monarchical period, a time Israel began to fully establish itself as a separate nation, yet desire to live in harmony with nations around. This fits Solomon’s time. The sending away of Ishmael, the firstborn, and appointing Isaac, the younger son, as the prime heir of Abraham through the alleged divine intervention in the narratives represents Yahweh’s legitimation of the Israelites’ settlement in the land of Canaan by driving away its original settlers. The prophecy of hostility in Genesis 16:12 is probably a portrayal of the reality the Israelites faced during the time of conquest and settlement that continued up to the time of David. The narratives of God’s promise of posterity, land, and name to Abraham in Genesis chapter 12, making the promise a covenant in chapter 15, materialising the covenant through circumcision in chapter 17, and displacing Abraham’s firstborn Ishmael in favour of the younger son Isaac and the sending away of all other brothers so that they may not share with Isaac in the inheritance of Abraham are thus best understood as theo-political ideological constructs of the Israelite nation-building. Originally, the land of Canaan belonged to “Ishmael” and other “sons of Abraham”, but by way of divine will and intervention, it now belonged to Isaac. The narratives’ tolerant attitude towards Ishmael represents the incorporation of the willing Canaanites into the new and spiritual Israelite, the firstborn, and chosen nation.

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<sup>131</sup> There are Marâ stories of siblings or half-brother rivals reconciled at the death bed and burial of their father. Thus the saying goes: A father’s death either divides or unites his children.

### *Esau-Jacob narratives*

Genesis 25:19-34 begins the Esau-Jacob narratives with the conception of these twin brothers, their jostling in their mother's womb, and Yahweh's explanation and prophecy concerning the jostling. The prophecy in Gen 25:23 is a theo-political ideological prophecy *par excellence*:

The Lord said to her, "Two nations are in your womb, and two peoples from within you will be separated; one people will be stronger than the other, and the older will serve the younger" (NIV translation).

The beginning phrase introduces the prophecy as given by Yahweh himself. The Israelite nation-building begins right in the womb of Rebekah. Two nations will separately come out of the (twin) brothers; one brother nation (that will come out of the younger of the twin) will be stronger than the other brother nation (that will come out of the older twin); hence the older brother will be subjugated by his younger brother. This is a case of the violation of the primogeniture tradition within the monogamous marriage. And it is Yahweh himself who sanctions the violation. Verses 24-26 report the birth of the twins. The first to come out was red and hairy. As noted above, who comes out first is very important even for the twins in order to determine who would hold the office of the firstborn. Red colour and hairy body would make the distinction easy. As the other brother comes out he was grasping the heel of the brother who came out first. The older twin thus was called  $\text{w}^{\text{f}}[$  (Esau which means hairy), also called  $\sim\text{d}\text{a}$  (Edom which means red) (25:30) and the younger twin  $\text{bq}[y$  (Jacob meaning "he grasps the heel" which figuratively means "to deceive") (see Sarna 1989:180-182, 194 for the word plays of  $\text{w}^{\text{f}}[$ ,  $\sim\text{d}\text{a}$ , and  $\text{bq}[y$ ).

Chapter 27 is the beginning of the fulfilment of the prophecy in chapter 25. Esau reportedly had sold his firstborn birthright to Jacob in chapter 25. So in chapter 27, Esau is no longer the firstborn, but simply the older son [ $\text{l d}^{\text{g}}\text{h} \text{!b}$ ]. The narrator must have "studiously avoid calling Esau the 'first-born' because the term carries with it social and legal implications that he wishes to avoid since Esau had sold his birthright" (Sarna 1989:190). Esau was not aware of the role his mother Rebekah played in his displacement. Rebekah's attitude towards her firstborn son Esau here betrays the normal mother-son bond and relationship, but was justified because of Yahweh's prophecy in chapter 25. Whatever interpretation one adopts, "Esau is the innocent victim of a cruel ruse" (Sarna 1989:193), who convulsively sobs when he discovers how Jacob had taken the prerogatives of the firstborn that rightfully belonged to him (Gen 27:30-41).

There have been discussions concerning the saleability or tradability of one's birthright. Mendelsohn (1959:39) is of the opinion that since a father could annul the birthright of his eldest

son, the first-born in turn could dispose of his privilege for a price, which Esau did (see also Arnold 1997, who is in agreement with Mendelsohn). A Nuzi tablet records a man who parted with his future inheritance share in return for three sheep received immediately from his brother (Sarna 1989:181). Biblical terminology does not differentiate between sale and barter; the Hebrew word *rk̄m* is used both for selling and bartering (Sarna 1989:182). Thus, in this researcher's opinion, the birthright in relation to civil (inheritance and succession) would appear to be saleable, but not the firstborn right in terms of cultic significance discussed above. Even if it is saleable, in our present case, based on Jacob needing Isaac's former blessings, the former seems to have understood that the brothers alleged birthright-lentil trade would have no effect unless their father Isaac approve it. The ambiguity, though, is that regardless of whether it is saleable or not, in our present text, their father Isaac is not aware of the elder Esau's alleged sale of his birthright to Jacob his younger brother. In addition, the tone of the rhetoric sounds that Isaac continued to maintain the opinion that his older son Esau would receive the firstborn blessing, in spite of that oracle about "the older serving the younger" (Gen 25:23; cf. Hamilton 1995:212). Thus had he not been deceived by Jacob through the help of his mother Rebekah, the blessings of the firstborn would still go to Esau, the actual firstborn.

Another intriguing matter in the narrative is the ancient concept of the power of sensory-aesthetic phenomenon (see the "inner texture" above). Isaac probably laid his hands on Jacob's head, the impersonated Esau, when he was pronouncing the blessings (Gen 27:30-40). Although Isaac pronounced the blessings for Esau, the one who sensory-aesthetically received it was Jacob. Isaac then said that what had happened could not be undone; the one on whom he laid his hands would receive the blessings. This shows that once hands were laid on a person and words of blessings (or curses) were uttered on the person by a divine representative, it could no longer be withdrawn; it would fulfil its purpose on the person who sensory-aesthetically received it (see also Sarna 1989:192, 194). To this, Wenham (1994:210) rightly points:

The poignant pathos of this scene is unsurpassed in Genesis. The dialogue is most moving, and unlike most Old Testament narrative, the intense emotions of the actors are described with some fullness. "Isaac was gripped by an uncontrollable trembling"; "He let out a loud and very anguished scream." But the purpose of this scene is more than dramatic; it underlines the fact that however irregular was Isaac's blessing, it was irrevocable, "Yes, he will be blessed" (v 33), and Esau or Isaac can do nothing to change it.

The most intriguing and incomprehensible phenomenon in the narrative according this researcher's opinion is about the all-knowing and righteous Yahweh approving and condoning lies and deceit. Jacob invokes God's name in an outright lie (Gen 27:20; cf. Sarna 1989:191). He also demanded Esau's oath (Gen 25:33), "an unqualifiedly sacred act" (Sarna 1989:182). These words violate the

third commandment which prohibits the Israelites from misusing the name of the Lord (Exod 20:7; Deut 5:11). He bluntly deceives his father and tells outright lies (Gen 27:17-29). This violates the fifth and sixth commandments of honouring parents and not giving false testimonies (Exod 20:12, 16; Deut 5:16, 20). He also violates the tenth commandment of not to covet one's neighbour's property (Exod 20:17; Deut 5:21). Jacob covets Esau's privileges associated with the firstborn (Gen 25:31, 33). Deceiving Isaac amounts to deceiving Isaac's God whose name he invokes. From this perspective, one could argue that the God of Isaac is a deceivable God, unless Yahweh is here pseudonymed by the narrative writer. From this vantage point, one could conclude that the Israelite nation was built on lies and deceptions.

Even from a sociological perspective, Jacob does not behave like a brother to Esau. Esau relates to Jacob as a true brother when he says, "Quick, let me have some of that red stew! I am famished" (Gen 25:30). But Jacob, instead of rushing to his famished brother's aid, says, "First sell me your birthright." This violates the norms of the patriarchal family [ba tyb] where members surround each other with love, concern, and care.<sup>132</sup> In the ancient patriarchal culture, men did not normally cook at home. Thus the narrative's reports of Jacob's cooking (25:29) and Isaac's cooking (27:31) too are unusual or exceptional phenomena. The narrative thus betrays the normal familial bond, love, culture, and ethics of the patriarchal family.

In the final analysis, the Esau-Jacob narratives are devoid of moral and familial principles. Alternative interpretations must, therefore, be sought. For Von Rad (1963:262), the uncivilised hunter (Esau representing southern Palestinian) is outwitted by the shepherd (Jacob) who is culturally more advanced and more calculating. For Janzen (1993:97), Esau is a "natural" man, but Jacob is one "poised before the complexities of human interaction with their opportunities for moral uprightness or deviance, spiritual integrity or alienation." Others explain it in terms of God's predetermination, in line with the tone of the narrative itself. Jacob's election is thereby disengaged from the improper means he later employed to obtain his rights (cf. Sarna 1989:177). Thus, the best way to understand this narrative is reading it from a theo-political ideological perspective of the Israelite nation-building.

Based on the reference to kings (Gen 36:31: "These were the kings who reigned in Edom before any Israelite king reigned", NIV), the narratives as we have it today may have been written during the

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<sup>132</sup> From the Marâ cultural perspective, a younger brother pressurising and manipulating his tired and hungry older brother in such a manner is so un-family like and the situation is unthinkable. If this narrative is not read through the eyes of Christianity, the Marâ people's sympathy would all go to Esau.

pre-exilic monarchical period. Syrén (1993:66-121 and literature cited there) rightly places Esau-Jacob narratives, especially Genesis 32-33, within a pre-exilic early Northern Israel framework, but the final editing of the chapters done by the postexilic community. From this perspective, the seniority of Esau (Edom) is reflected in his having achieved a settled kingdom earlier than Jacob/Israel (Gen 36:31). The prophecy concerning the supremacy of Jacob finds expression in David's subjugation of Edom (Sarna 1989:179). The conflict between Israel and Edom did not end with the subjugation of the latter by David. They were in constant conflict throughout the monarchy period. Sometimes Edom became a part of the Israelite empire (1 Sam 14:47; 2 Sam 8:14). Sometimes it enjoyed independence and used every opportunity to assert itself against Israel (2 Ki 8:20, 22). Finally when Jerusalem fell, Edom sided with the Babylonians and helped cut off those Judean trying to escape from the Babylonians which prompted the prophets to thunder against Edom (Ezek 25:12-14; Obad 10-14; Ps 137:7). Hence the older serving the younger in the Esau-Jacob narrative finds expression in the prophetic prediction that "Edom will be destroyed once and for all and incorporated into the kingdom of Israel" (Wenham 1994:180). Israel, the younger nation, will be firstborn nation above the old and established nation Edom. The reconciliatory meeting of Jacob and Esau ends in their final separation. This also finds expression in Genesis 36:6-8, where it is reported that the descendants of Esau originally lived in Canaan, but later moved to "the hill country of Seir."

The narrative also portrays, on the one hand, a reconciliatory picture between Edom (Esau) and Israel (Jacob) (Gen 32; 33),<sup>133</sup> but on the other, it presents a tangible tension between them (note Jacob's precautionary steps before meeting Esau and his ruses to impress him). These depict a state of the contemporary peace between the two nations who were "traditional" enemies. Adopting a divergent (or even competing) position, Deuteronomy 2, however, had settled the boundaries of Edom, given by divine order and so inviolable by Israel. God gave Canaan to Israel and Seir to Esau (Gen 33:16-18). In Numbers 20, Edom is depicted as explicitly and outspokenly hostile to Israel. Syrén (1993:120-121) contends that the (post-exilic) final author(s)/editor(s) of Genesis 32-33 applied the pattern of the confrontation in Numbers 20 to the lifetime of Jacob and Esau, the forefathers of their respective nations, to emphasise that reconciliation between Israel and Edom had already taken place in their forefather's days. The portrayal of Jacob (Israel) and Esau (Edom) as brothers is attested in other Old Testament texts (Num 20:14; Deut 20:14; Obad v. 10; Mal 1:2).

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<sup>133</sup> Dicou (1990:186-188) advances a theory that the role of Esau/Edom is one and the same in Genesis and the Prophets: the antitype of Jacob-Israel and archetype of Israel's enemies. Syrén (1993:119 note) argues against this by asserting that "Genesis already contains a twofold presentation of Esau. The Prophets certainly oscillate between the real, concrete Edom and the archetype... Edom's identity as a 'nation' was probably absorbed by the 'type' through a gradual process connected with historical changes. What survived was an image of Edom as the typification of evil which could also be absolutised to take on an apocalyptic dimension.

Given the long and bitter history of enmity between Israel and Edom, this tradition of Jacob and Esau as brothers probably aims to bring peace between the two enemies on the ground that they had common ancestry, blood kinship, or treaty associations (Sarna 1989:177). Or as Syrén (1993) argues, this is probably done in fitting with the new conditions that faced the postexilic community which included the necessity of working out a *modus vivendi* in relation to foreigners. In so doing, “in contrast to the prophetic texts, Genesis 32-33 pursues a more moderate line, endorsing an attitude of integration and reserved openness” (Syrén 1993:120-121).

By God’s will Jacob is made the firstborn of Isaac. Jacob becomes Israel. By God’s will, Israel becomes the firstborn nation above all nations (Exod 4:22; Ps 89:27; Jer 31:9). This is a beautiful theo-political ideology, despite Yahweh’s alleged approval of Jacob’s lies and deceit remain a moral dilemma.

### ***Reuben-Joseph (and Judah) and Manasseh-Ephraim narratives***

Reuben, the firstborn of Jacob through Leah (Gen 29:31-32, 35:23), is reported to have forfeited his birthright because of his co-habitation with his step-mother (his father’s concubine), Bilhah (Gen 35:22; 49:3-4; 1 Chr 5:1). Various theories have been advanced as to the motive of Reuben’s act. According to Sarna’s (1989:244-245) construct, Reuben’s act is linked to his step-mother Rachel’s demise. Bilhah is Rachel’s maid. Thus by violating Bilhah, Reuben makes sure that she cannot supplant or even rival his mother Leah’s position as the chief wife of Jacob, now that Rachel is dead. Concerning Reuben’s action, a statement of Shabbat 55b reads: “He resented his mother’s humiliation. He said, ‘If my mother’s sister was a rival to my mother, must the maid of my mother’s sister be a rival to my mother?’” (Sarna 1989:244). It is interesting that it was this same Reuben who earlier was also instrumental to restoring the conjugal rights of his mother Leah (Gen 30:14-16). By co-habiting with Bilhah, Reuben might have intended to make the former a “living widow.”<sup>134</sup> Another motive probably could be an act of Reuben’s claim of his succession, albeit prematurely. There is evidence from the Ancient Near East as well as biblical texts that link the possession of concubines of one’s father or of one’s vanquished enemy on the part of the aspirant or usurper with the bestowal of legitimacy on the assumption of heirship to validate the succession (2 Sam 3:7-8; 12:7-8; 1 Ki 2:13-25).<sup>135</sup>

<sup>134</sup> The same fate befell on David’s concubines who were possessed by Absalom for a short time (2 Sam 15:16; 16:22; 20:3).

<sup>135</sup> According to one old Mesopotamian text, the Harab myth, in seven successive generations the son takes the mother and displaces the father (Janzen 1993:189).

Based on these assumptions, Sarna (1989:245) rightly concludes that Reuben's bid to promote his mother's right is at the same time a calculated challenge to his father's authority. His act is more political than lustful (cf. Hamilton 1995:387). It was an attempt to usurp the leadership of the Israelite tribes, which failure is reflected in Jacob's rebuke (Gen 49:3-4) where Reuben is removed from the hegemony over the tribes.<sup>136</sup> In 1 Chronicles 5:1, it is explicitly stated that Reuben was "the firstborn of Israel, but when he defiled his father's bed, his birthright was given to the sons of Joseph" (Tanakh's translation). It is also possible that the Reubenites' rebellion against Moses in the wilderness (Num 16) is in some way connected with that tribe's loss of status (Sarna 1989:245). Some theories have also been advanced about the reason for Joseph's supercession of all the older brothers to become the prime heir of the Jacobite (Israelite) household. It is most likely because of Joseph's saving act of Jacob's family during famine (Gen 37, 39-50) as well as his status as the firstborn son of Jacob's favourite wife Rachel. There is yet another ironical twist in the narrative. According to the essence of the Jacob's blessings, it is not Joseph, but Judah who is chosen to lead the Jacobite (Israelite) household (nation) (Gen 49:8-12; 1 Chr 28:4). In the same way he displaces the firstborn Esau, Jacob displaces his own firstborn son Reuben by Joseph and Joseph's firstborn son Manasseh by the younger son Ephraim (Gen 48). There is no concrete reason given for the displacement of Manasseh by Ephraim.

Syrén (1993:130-139) remarks that the Reuben-Joseph (and Judah) narratives and Manasseh-Ephraim narratives represent the inner Israelite struggle between the Reubenite, Judahite and Josephite (Ephraimite and Manasseh) tribes. The displacement of Reuben by Judah purports to explain and authorise the rise to power of the tribe of Judah in the South (Jerusalem) and the displacement of Manasseh by Ephraim as the firstborn of Joseph purports to explain and authorise the rise to power of the half tribe of Ephraim in the North (Samaria). Nearly half a century ago, Von Rad (1963) had already captured this sentiment. According to Von Rad (1963:408, 411), the leading part of the migration of the so-called Rachel tribes was the "house of Joseph" which settled on the Samaritan mountains in the central part of the land west of the Jordan. This house of Joseph seems still to have been split into the two tribes, Manasseh and Ephraim, at the period of the Judges (cf. Jos 17:17; 18:5; Jdg 1:27, 29). The Song of Deborah already knows Ephraim as a separate tribe (Jdg 5:14), and the very ancient lists in Numbers 26:5-51 and 1:5-15 mention Joseph's two sons side by side, however, with a very significant minor difference. In the first-mentioned and older list, the

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<sup>136</sup> According to Janzen (1993:189), Jacob's words to Reuben, "you shall not succeed," may be a reminiscent of Jacob's own brother Esau who did not succeed.

order is Manasseh-Ephraim, in other lists it was Ephraim-Manasseh. This could point to the situation whereby the more centrally located tribe of Ephraim had early politically surpassed the fraternal tribe of Manasseh.

### *Adonijah-Solomon narratives*

King Saul failed to establish a dynasty. It was David who established the first dynasty in Israel. Primogeniture would be the norm for the dynastic succession. As David was dying, there must have been speculations and rumours concerning who among his sons would succeed him. There is legitimacy to Adonijah's claim of the throne based on the rule of primogeniture. According to 1 Chronicle 3:1-2, Amnon was the firstborn of David followed by Daniel, Absalom, and Adonijah. The firstborn Amnon had raped his half-sister Tamar and was killed in revenge by Absalom, Tamar's full brother (2 Sam 13). Chileab, David's second son (2 Sam 3:3), apparently died in childhood. Impatient for power, David's third son, Absalom, attempted to seize the throne by force, plunged the nation into civil war, and lost his own life in the gamble (2 Sam 15-18). This left Adonijah as the oldest son in order of birth (2 Sam 3:2-4; cf. Rice 1990:8-9). Adonijah's claim to the throne based on primogeniture is also supported by the older and more conservative elements. They include Joab, the commander of the free militia of Israel, and the kinsman of David (1 Chr 2:16), and Abiathar, who had survived Saul's massacre of the priests at Nob and had been the companion and consultant priest of David when he was an outlaw from Saul in the wild country of Judah (1 Sam 22:20; cf. Gray 1970:79). Adonijah might have sensed Bathsheba's desire and plan to influence David to make her son Solomon the successor to the throne. Or he might have believed that since the throne rightfully belonged to him, his father David would at the end bless him. Thus, he had to take determined action if he would be king (1 Ki 5-27) (DeVries 1985:13). Even Bathsheba herself understood the law of succession by primogeniture. Hence she did not refute Adonijah's words when he said to her, "As you know... the kingdom was mine. All Israel looked to me as their king. But things changed, and the kingdom has gone to my brother; for it has come to him from the Lord" (1 Ki 2:5).

As noted above, the successor to the throne normally took the late king's concubines if he wanted to. This must have been the reason Solomon understood when Adonijah later requested him to give Abishag, David's young "concubine", to be his wife as nothing else but a demand for the throne again: "King Solomon answered his mother, 'Why do you request Abishag the Shunammite for Adonijah? You might as well request the kingdom for him – after all, he is my older brother...'" (1 Ki 2:22). Solomon might have feared that Adonijah has not given up the throne that rightfully

belonged to him. But he had the absolute authority now. He charged Adonijah for treason and had him executed (1 Ki 2:23-25). This act was based on David's action in 1 Kings 1:32-33 which renders any continuing claim by Adonijah as an act of rebellion (Wiseman 1993:72). The fear of Solomon and his mother being executed by Adonijah was the sole reason for Nathan and Bathsheba's intervention to persuade David to make Solomon king, as Adonijah, a usurper, would be expected to eliminate all rivals with their families (1 Ki 15:29; 2 Ki 10:11; 11:1; cf. Wiseman 1993:70).

Why did David favour Solomon over Adonijah? No conclusive reason is given except for his promise to Bathsheba by the Lord (oath) that he would make her son Solomon to be his successor (1 Ki 1:13, 29-30; 1 Chr 23:1). There is no mention of Solomon being wiser and mightier than Adonijah which would make the former a better choice. It is the influence of the beloved wife at work. It is palace strife for succession *par excellence*. It is a common story of power politics thinly disguised as a divinely sanctioned event and whatever apologies may be given, Solomon eliminated his rivals in dubious circumstances and won (Cogan 2000:180 and works cited there). Both the king and the alleged divine intervention saved the day for Solomon (1 Ki 1:28-53). With David's blessing and by Yahweh's approval, a complete reversal of the positions of Adonijah and Solomon was effected. The major theo-political ideology in this episode could be drawn from the text as probably being written during the pre-exilic monarchic period, probably during the time of Solomon's reign. The violation of the rule of primogeniture in Solomon's succession to the throne had to be legitimated. Thus the Deuteronomistic historian presents David's violation of primogeniture rule as a divinely sanctioned act for the good of the nation. "Solomon's accession involved a revelation of God (that is, of divine purpose), but the verbal testimony the throne-succession historian is required in order to preserve that revelatory event for generations to come" (De Vries 1985:21; see also Rice 1990:17). On his part, the Chronicler legitimates Solomon's ascension to the throne on religious grounds (1 Chr 28:1-29:25; cf. Myers 1965:191). Since it was Yahweh who had chosen Solomon to build the temple, his dwelling place, Solomon is the right person to succeed David as the king of Israel (for further discussion, see Selman 1994:248-262; Japhet 1993:481-517).

#### **4.5.9 Summary observations on ideological and theological textures**

Above we have expounded on how the interpreter's individual ideological location and his or her relation to groups would inevitably influence his or her interpretation of a text. We also discussed how a text can have different interpretive meanings according to different modes of intellectual

discourses interpreters employ. We analysed the ideology in the social and cultural context of the implied author of Deuteronomy 21:15-17 as well as the ideology of power in the discourse of the text. As Yee (1999:535) notes, “while ideologies help to foster and sustain a distinctive worldview that structures and inform people’s lives, ideologies also disguise or explain away features of society that may be unjust.” On the one hand, the analysis of ideological textures help explain why certain people in a society are accorded economic privileges, but on the other, it also discovers that “ideologies provide a rationalisation for why a particular gender or race is allowed to perform specified actions while others cannot” (Yee 1999:535). From this perspective, one could conclude that ideologies “resolve” as well as provide reasons for inequalities, struggles, and contradictions that individuals or groups may experience in their everyday lives. We see this in our text. While the primogeniture instruction resolves the would-be family strifes, it also provides rationalisation for allowing the practice of patriarchy.

Further, we have also discussed how a movement could develop into an ideological system or “ism.” Although patriarchy was a social system for the shouldering of familial responsibilities and maintaining healthy familial relationships, it has become an ideology of paternal power in the family, which may not be criticised but followed accordingly by members of the family. When a system becomes an ideology, it also becomes vulnerable to abuse by idiosyncratic power holders. We have seen how fathers of the patriarchal society then and now have idiosyncratically abused their paternal powers to exploit women and children of the family and society. Theology of primogeniture and its open-ended interpretation and application thus is a critique of patriarchy as an ideology.

Based on the prologue of the book of Deuteronomy, “these are the words of Yahweh” (cf. Deut 1:1, 5), Deuteronomy 21:15-17 is a part of Yahweh’s commandments to the Israelites. Yahweh spoke to Moses, the man of God, who in turn spoke Yahweh’s words to the people of Israel. Even if this particular text was written by someone other than Moses through recitation and recontextualisation of the Ancient Near East texts or the collective memory of ancient Israel on primogeniture, the text is still the inspired word of God. The sacredness of the text is also supported by the fact that it is a part of the canon of Scriptures for both Jewish and Christian communities. Deuteronomy 21:15-17, or rather, the theology of primogeniture, is therefore a part of the divine salvation history of the Israelites. As redeemed and covenanted community, they are to live according to the stipulations of Yahweh in the Promised Land. This includes observing the instructions on primogeniture, which basically means shouldering and fulfilling familial responsibilities and maintaining healthy familial relationships.

From a Deuteronomistic theological perspective, the sanctity of the firstborn is inherently drawn from his father because he is the first fruit of his father's strength. In the Priestly texts (cf. Exod 13:12b-13; 34:19b-20; Num 18:16-18; cf. Exod 22:28-29 [ET 29-30]; Lev 27:26-27), the sanctity of the firstborn is drawn from Yahweh because of the passing over of all the Israelite firstborns on the eve of Exodus when all the Egyptian firstborns were killed. For this reason, Yahweh demands that all the firstborn sons that open the wombs must be given to him. Different interpretations have been advanced concerning the meaning, "given to the Lord." This researcher has suggested that it is best understood in terms of an open-ended theological meaning of the overall sanctity and significance of the firstborn.

Deuteronomy 21:15-17 protects the "law" of primogeniture. But in narratives we find this law repeatedly violated through the divine approval and legitimation. This makes the principle of 'blessing' a common textual feature of all the narratives concerning the displacement of the firstborns by younger brothers. The 'blessing', recorded as a direct quotation of Yahweh or a Patriarch formally demoted the firstborn, removing the protagonists from the patronage of their own family. In all the narratives discussed above, the choice (election) of the younger brother was attributed to God, thus leaving little or no room for further elucidation and challenge except in the case of Reuben. This theo-political ideology is a part of the narrative strategy in Genesis to lay out the formation of the nations and races on earth under the auspices of the God of Israel in general and to underline Israel's consciousness of its own standing as God's special elected people in particular. In this way, Israel's self-consciousness as a separate nation – its election – also found expression<sup>137</sup> (Syrén 1993:140-145; Steinberg 1985:109-113, 183-184):

This is what the LORD says: Israel is my firstborn son (Exod 4:22) (NIV).

I am Israel's father, and Ephraim is my firstborn son (Jer 31:9) (NIV).<sup>138</sup>

Why was becoming the firstborn among the nations so important for the Israelites? Tsevat (1975:125-127) believes that this goes back to the very inheritance and succession as well as the cultic life where the firstborn son was held in exceedingly high esteem:

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<sup>137</sup> See also Arnold (1997:659), who concludes that God's freedom to choose those who were not the firstborn by nature and treat them as firstborn demonstrates God's grace and sovereign rule over people and nations. Although Arnold's conclusion of the displacement of the firstborn by the younger son as a demonstration of God's sovereignty – God can do whatever he wants – would solve all the problems of the apparent contradictions between narratives and Deuteronomy on primogeniture, it gives no room for further elucidation.

<sup>138</sup> For God as Israel's father, see Deut 32:6; Isa 9:6; 63:16; 64:8; Jer 3:19; Hos 11:1; Mal 2:10; also Rom 9:4; 2 Cor 6:18.

The first is the best. *re'shiith* has both of these meanings, and in the expression... “the first of the [procreative] strength,” the latter sense is quite clear. Thus *bekhor* assumes the meaning of “excellent” (par. To ‘*elyon*, “highest,” Ps 89:28[27], and actually functions as a sign of elative ... It is not only the best that belongs to God, but also the first.<sup>139</sup>

How the firstborn son was held in exceedingly high esteem position was also clearly attested in the Deuteronomistic theology. After the fall of Jericho, Joshua consecrated the city to the Lord and prohibited the rebuilding of the city as a perpetual sign of Yahweh’s victory and judgment over the people of Jericho. Like disobedient Pharaoh and the Egyptians who lost their highly esteemed firstborn sons, “Cursed before the Lord is the man who undertakes to rebuild this city, Jericho: ‘At the cost of his firstborn son will he lay its foundation; at the cost of his youngest will he set up its gates’ (Jos 6:26). Hiel of Bethel rebuilt the city in the time of Ahab. The curse was fulfilled. Hiel was reported to have laid the foundation of the city “at the cost of his firstborn son Abiram” and set up its gates “at the cost of his youngest son Segup” (1 Ki 16:34).

This brings us to the importance of reading the primogeniture text of Deuteronomy 21:15-17 in the context of the Deuteronomistic theology of blessings for obedience and curses for disobedience (cf. Rose 2000:424-455). For the Deuteronomist, exile was God’s punishment of Israel for its disobedience. But a theologian must give meaning to life. For this reason, the Deuteronomist strongly emphasises the necessity of a return [במ] to Yahweh (Rose 2000:454). Thus Deuteronomy 21:15-17 is a call to the idiosyncratic fathers who had been displacing their firstborn sons in favour of their younger sons of their beloved wives to return to the primogeniture tradition by recognising the actual firstborn son and according him his birthrights of prime inheritance and succession. This will result in blessings and harmony for the family and society.

We noted above that because of the concept of the sanctity and significance of the firstborn, some ancient societies would offer their firstborns as sacrifices for the deliverance and blessing of the father, family, society, and entire kingdom. Other societies see the father reborn in his firstborn. Thus if the firstborn lived, he would become a rival to his father. For this reason, the firstborns were killed at their birth. This ancient practice of the sacrifice of the firstborn seemed to have spilled over to the Old Testament, and ancient Israel for that matter, at least on a literary level, if not in actual practice (cf. Mic 6:7 and above references). The Old Testament recognises the sanctity of the

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<sup>139</sup> For this reason, “the first born of man and beast and the firstfruits of field and garden (see also Lev 19:23-25) are given to God as his portion by sacral consecration, and therefore can be set free for secular use only by redemption (substitution or ransom)” (Exod 13:13, 15; 34:20; Lev 27:26f.; Num 3:44-51; 18:15-17; Deut 14:23-26)” (Tsevat 1975:126).

firstborn. However, as human sacrifice is incompatible with the worship of Yahweh, firstborn sacrifice (“give to the Lord”) is reinterpreted and appropriated. The firstborns are to be redeemed for the service of the Lord (cultic service). But since there were practical impossibilities for all the firstborns to serve in the cult, later they were replaced by the Levites. In the exilic literature, the notion of human firstborn sacrifice seems to have been vaguely revisited and applied it metaphorically on the sacrifice and suffering of Israel as the firstborn son (nation) of Yahweh.<sup>140</sup>

And I will pour out on the house of David and the inhabitants of Jerusalem a spirit of grace and supplication. They will look on me, the one they have pierced, and they will mourn for him as one mourns for an only child, and grieve bitterly for him as one grieves for a firstborn son (Zech 12:10). They will come with weeping; they will pray as I bring them back. I will lead them beside streams of water on a level path where they will not stumble, because I am Israel's father, and Ephraim is my firstborn son (Jer 31:9, NIV).

History repeats itself, so they say. Inasmuch as the displacement of Esau, the firstborn, by Jacob, the younger son, finds expression in Yahweh's bestowment of Israel, the youngest nation, above all other nations, the shame and suffering of Esau because of his displacement by his younger brother Jacob finds expressions in the shame and suffering of Israel, the firstborn of all nations, in exile who has been displaced by the “younger brother” Babylon. Esau (Edom) the firstborn was displaced by his own father Isaac in “favour” of Jacob (Israel) the younger son through the divine intervention and legitimation. Israel is now displaced by his own father (Yahweh) in “favour” of Babylon the younger son. Thus, shame because of the loss of their firstborn rights, that is, the loss of land and nation, was the epitome of suffering for the Israelites during exile (see also Plevnik 2000:108-110).

Therefore, I will surely forget you and cast you out of my presence along with the city I gave to you and your fathers. I will bring upon you everlasting disgrace – everlasting shame that will not be forgotten (Jer 23:39-40; see also 13:26-27; 51:51; Hos 2:10; Nah 3:5).

The Israelites' self-awareness as God's firstborn nation became even stronger than ever before during the exile. One cherishes what one has after it is lost. The Israelites in exile now have lost their firstborn birthrights of land and throne. The following Exodus story is thus retold during the exilic period as a reminder and motivation of their self-awareness of the firstborn nation and so return to the land from their Babylonian exile.

Then say to Pharaoh, 'This is what the LORD says: Israel is my firstborn son, and I told you, "Let my son go, so he may worship me." But you refused to let him go; so I will kill your firstborn son.'" (Exod 4:22-23)

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<sup>140</sup> The New Testament theology of the offering of Jesus as a sacrifice on a cross for the sin of humanity, a human sacrifice, is a mystery, if not strange. Perhaps, this is best understood symbolically against the backdrop of the sacrificial suffering and death of the firstborn for the good of his family and society in some ancient societies as well as ancient Israel; the latter mostly in a theological and literary level (cf. Heb 1:6; Col 1:15, 18; Rom 8:29; Rev 1:5).

## 4.6 CONCLUDING REMARKS ON SOCIO-RHETORICAL INTERPRETATION OF DEUTERONOMY 21:15-17

We have attempted a socio-rhetorical interpretation of the primogeniture text of Deuteronomy 21:15-17. An inner and intertexture analyses indicate that daughters were excluded from inheritance and succession in ancient Israel. There were three interrelated reasons for this. First, the family land was strongly linked with the name of the family – patrilineal family. Second, it was sons, especially the firstborn, who continued the family name. Therefore, the family land was passed down to patrilineal descendants (sons). Third, upon marriage, a daughter left her paternal home and family name for her husband's home and family name. Thus to protect the patrilineal family land which strongly associated with the patrilineal family name and dynasty, daughters were excluded from inheritance and succession. This is one of the clearest demonstrations of ancient Israel as a patriarchal and patrilineal society. Within the inheritance of sons only, we have also seen the prerogatives accorded to the firstborn by virtue of his birth. Being the first fruit of his father's procreative seed/strength, the firstborn is to receive a two-third of prime estate. In the past, this primogeniture tradition had often been violated. Deuteronomy 21:15-17 stops this violation.

In the intertexture analysis, we studied that the primogeniture tradition in ancient Israel was probably a recitation and recontextualisation of the written primogeniture law collections of the Ancient Near East or the collective memory of the same. In addition, it has been suggested that the Hebrew  $\sim\text{y}m\text{v } \text{y}p$  (two mouths) most probably referred to the firstborn inheriting a two-thirds of his father's estate, which in turn referred to the prime heirship. From the intertexture analysis, it can be concluded that being a prime heir entailed shouldering familial responsibilities and maintaining healthy familial relationships. It is also to safeguard the continual holding of the family land as well as the continuation of the family name and title.

Through a social and cultural texture analysis, the special relevance and importance of the primogeniture system in rural farming communities have been explicated. Primogeniture, patriarchy for that matter as well, in this context is not so much a privilege or authority as it is a responsibility. Although there were textual examples of how children and wives have been abused and used by fathers and husbands to serve their own purposes, the general tone of patriarchy in the Old Testament is more about paternal responsibilities of loving, caring, providing, and protecting. The firstborn was second to the father in shouldering these familial responsibilities and maintaining healthy familial relationships. For this reason, marriage and family in the Old Testament was

regarded as a sacred institution. We also noted how the social fabric in terms of the family was affected by the rise of monarchy as well as the effect of the devastating event of the exile on the family. This is indicative of a society undergoing change. Its family values and norms were not exempted.

On ideological and theological textures, we discussed how an interpreter's individual ideological location and his/her relation to groups as well as modes and spheres of interpretive ideologies he/she chooses would inevitably influence his/her understanding of the text and its interpreters. In addition to these, an attempt was made to assess patriarchy as a movement of familial responsibility and relationship and to show that it had become an ideology in ancient Israel. The research then discovers that primogeniture is in a sense a critique of patriarchy as an ideology. It is a polemic against an ideology that the society has placed above criticism. As primogeniture "law" is subject to change and modifications, patriarchy too must be subject to criticism and change.

Theologically, we have affirmed that the primogeniture instruction is a part of the commandment Yahweh gave to the Israelites. The chosen and covenanted people had to be different from other peoples. In so doing, they had to obey and live according to the commandments Yahweh gave to them through Moses, the holy man of God. In particular and in more detail, we analysed the practice of the offering of the firstborns as sacrifices in ancient societies because of the belief of sanctity and significance associated with them. We noted that this ancient practice of sacrifice of the firstborn seemed to have spilled over the Old Testament, and ancient Israel for that matter, at least in a literary level, if not in actual practice. However, as human sacrifice is incompatible with the worship of Yahweh, firstborn sacrifice (or give to the Lord) is reinterpreted and appropriated in the Old Testament. They are to be redeemed for the service of the Lord (cultic service). But since there were practical impossibilities for all the firstborns to serve in the cult, later they were replaced by the Levites. In spite of their redemption and replacement by the Levites, the concept of the sanctity, significance, and importance of the firstborn, however, remained with them throughout their life, especially in consideration for inheritance and succession.

Interplaying ideological and sacred (theological) textures, we also shown a portrayal of the Old Testament as a theo-political ideological book and analysed how the writers of the narratives conversely use the "law" of primogeniture to advance their theo-political ideology of the Israelite nation-building.

In the foregoing, we have examined the Ancient Near East background of primogeniture in Chapter Two. We also reviewed recent scholarly opinions on primogeniture in the Old Testament in Chapter Three. In the present chapter, we studied primogeniture in the Old Testament by socio-rhetorically interpreting Deuteronomy 21:15-17. Thus our final task in the following chapter will be to draw some conclusions on primogeniture and its links to patriarchy in Old Testament theology and hermeneutics. We will also highlight significant contributions this research makes to Old Testament scholarship and identifies areas for further research.

## Chapter Five

### CONCLUSIONS

#### Primogeniture, Patriarchy, Old Testament Theology, and Hermeneutics

##### 5.1 INTRODUCTORY REMARKS

In the preceding chapter, we tested our hypotheses using the methodology proposed in Chapter One, with Chapter Two functioning as the Ancient Near East contexts of primogeniture. In Chapter Three, we reviewed recent scholarly opinions on the subject. We concluded that there was indeed a link between primogeniture and patriarchy in ancient Israel. Our final task in this concluding chapter is, therefore, to draw some synchronised conclusions on primogeniture, patriarchy, Old Testament theology, and hermeneutics.

In formulating a theology of the link between primogeniture and patriarchy in the Old Testament, it is important to first understand where Deuteronomy 21:15-17 fits in the overall theology and ethics of the Old Testament in general and in the book of Deuteronomy in particular. Recent years have witnessed the appearance of numerous and voluminous works on Old Testament theology or theologies and ethics, some of which are cited elsewhere in this research. In studying Old Testament theology, it should be noted that different books and texts of the Old Testament were written in different times and circumstances covering a period of nearly a thousand years. For this reason, it is difficult to write a systematic theology on the Old Testament. Nor is it easy to establish *the* central theme of the Old Testament, even if it has one. Rather, the Old Testament contains many theological-ethical themes (Gerstenberger 2002). If one should speak in terms of central theological-ethical themes, in this researcher's opinion, covenant and obligation; judgment and salvation; land and nation-building; and familial responsibilities and relationships would constitute some of the central themes of the Old Testament as well as the book of Deuteronomy.

All these themes are intertwined in the present research. For example, while the instructions concerning primogeniture in Deuteronomy 21:15-17 belong to the body of the family law in Deuteronomy, it is also consistent with those numerous regulations in the book designed to safeguard the rights, protect the lives, and take care of the needs of members of the family and society within the overall framework of the covenant and obligation theme of the book of

Deuteronomy (Miller 1990:166). In what follow, we shall attempt to formulate a theology on the link between primogeniture and patriarchy and how the study of primogeniture in the Old Testament is hermeneutically relevant for our theological-ethical understanding of patriarchy in ancient Israel. We shall also underline the present research's significant contributions to Old Testament scholarship as well as identify areas the present research has opened up for further research.

## 5.2 PRIMOGENITURE AS A CORNERSTONE FOR PATRIARCHY

We have asserted that ancient Israel was a patriarchal society. Textual evidence from both the Ancient Near East and Old Testament texts analysed in Chapters Two, Three, and Four overwhelmingly support the practice of primogeniture for family inheritance and royal succession in the Ancient Near East as well as ancient Israelite societies. The apologetic nature of the narratives as well as the search for divine approval and legitimation whenever the primogeniture tradition was violated, validate primogeniture as a well established and commonly accepted custom. According to the Old Testament rule of primogeniture, even if there were older sisters, the firstborn son in ancient Israel superseded all his older sisters including the firstborn daughter and became the prime heir of his father. This indeed is a manifestation of patriarchy. It explains Lerner's (1986:239) definition of patriarchy as "the manifestation and institutionalization of male dominance over women and children in the family and the extension of male dominance over women in society in general."

Another strong link between primogeniture and patriarchy is attested in the firstborn son continuing the patrilineal family name and land. In this way primogeniture functioned as a cornerstone for the smooth functioning and continual survival of patriarchy as well as a necessary custom for the continual holding of the patrilineal family inheritance/land. Genealogy is traced patrilineally, with the firstborn occupying the top of the pyramid of genealogy. The firstborn was also usually mentioned first in the description of marriage in the family which was patrilocal. He was also mentioned first in the patrilineal family land holding. There was a tripartite relationship between primogeniture [hrkb], patriarchal family [ba tyb], and the family land [hl xil] in ancient Israel. We noted above that the land of Israel was Yahweh's which the Israelites received from him as a collective inheritance. The same concept applied to the individual family lands as well. They were gifts from Yahweh to the families. But they did not own it, as the real ownership remained with Yahweh. For this reason, individual families may not sell their family lands (inheritances) in

perpetuity (Lev 25:23-24).<sup>1</sup> Thus, primogeniture became a necessary custom for the continual survival of the *ba tyb* kinship structure and name as well as for the continual holding of the family land by the *ba tyb*, whether divided or undivided (cf. Bendor 1996:176-178).

The primogeniture system ensured that the family inheritance-land [חל חן] was passed down only to the patrilineal descendants, with the firstborn son as the prime heir. In this way, the family would continually possess their inalienable family land. We could, therefore, conclude that, even if the actual firstborn was not made the prime heir as was the case in many instances, the firstborn as an office was intact; a son still needed to hold the office of the firstborn. This indicates that primogeniture as an office was a necessary system if patriarchy should survive and patrilineal family land continually possessed.

### 5.3 PRIMOGENITURE AS FAMILIAL RESPONSIBILITY

As noted above, presenting a case for a paradigmatic approach to the Old Testament ethics, Janzen (1994) observes five ethical paradigms – familial paradigm (peace), priestly paradigm (holiness), wisdom paradigm (wise living), royal paradigm (justice), and prophetic paradigm (Torah). Janzen then rightly concludes that the other four paradigms revolve around the familial paradigm. In the Old Testament ideal family, the father is to shoulder familial responsibilities of protection, provision, nurture, education, etc, and maintain healthy and loving familial relationships.<sup>2</sup> The firstborn was the second in rank in shouldering these responsibilities. This is vividly demonstrated in the rendering of God (either explicitly or implicitly) in the patriarchal familial metaphors. Metaphors mirror a society's worldview and ways of perceptions. According to Kövecses (2002:12-25), metaphor is a conceptual understanding of one domain of experience in terms of another conceptual domain. Concrete bodily and real life experiences serve as ideal source domains that are utilised to conceptualise more abstract target domains. Metaphors can be used to describe emotion, desire, morality, thought, society, religion, politics, relationships, events, time, etc (cf. Kötzte 2007:153) (for further discussion , see Stienstra 1993:17-69).

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<sup>1</sup> For a short summary on the family in the Old Testament theology in relation to the land, see also Perdue 1997b:234-237.

<sup>2</sup> But in reality, the family in ancient Israel had its share of tensions, turmoil, and tragedies, which are in many respects similar to familial problems facing the world today (Drinkard 2001:485-505). In many cases it was the wives and daughters who were victims at the hands of their husbands and fathers. Tribble (1984) has referred to these as “texts of terror” (e.g., Jdg 19).

In the Bible, the ideal character of what an Israelite family would look like is found in metaphors. These familial metaphors carry theological-ethical truths of familial relationship between Yahweh and Israel.<sup>3</sup> It is by using these patriarchal familial metaphors, with their heuristic values, that God's revelation is received, understood, and experienced. In the metaphoric expressions, Yahweh is represented as proactively involved in the lives of individual Israelite, in the families, as well as in Israel as a whole. Yahweh helps in procreation.<sup>4</sup> He liberates, nurtures, and protects the family.<sup>5</sup> He teaches the family.<sup>6</sup> He fights for the family as a divine warrior (pre-monarchy),<sup>7</sup> gives instructions for life, and judges the people (cf. Exod 20:2-17; Ps 82:8 and "law" codes discussed above). Yahweh is presented as the head of the family as well as the responsible father (cf. Exod 4:22; Deut 32:6; Prov 8-9; Isa 63:16; Jer 3:4, 19; 31:9; Lam 2:13; Hos 11). He is a kinsman-redeemer [lāq] of his people (Job 19:25; Ps 19:14; 78:35; Isa 41:14; 43:14; Jer 50:34), widows and the poor (Ps 146:9; Jer 50:34), and the redeemer of Israel his family (Exod 15:13; Ps 74:2; 77:15; 78:35). God is also a compassionate mother<sup>8</sup> (Num 11:12; Deut 32:18; Prov 1; 8-9; Sir 24). Finally, Yahweh is presented as a husband and Israel his wife, with Yahweh as the faithful husband and Israel the unfaithful wife (Jer 2:2; 3:20; Ezek 16; Hos 2). Thus, Yahweh the husband could divorce, humiliate, reject, and abandon his unfaithful wife Israel (Jer 3:1; Hos 1-3), leaving her to be the victim of invaders. But because of his love, he forgives her and takes her back again and again (Isa 50:1; 54:6-7; 62:4-5; Jer 2:2, 23-27; Hos 2; see Perdue 1997b:226-230; Stienstra 1993:96ff for interesting discussion of "Yahweh as the husband of his people").

If Yahweh is the "procreator," liberator, nurturer, protector, teacher, warrior, lawgiver, judge, redeemer, father, mother, and husband, Israel is a son (Hos 11; Jer 2-6), even the firstborn son (Exod 4:23; Jer 31:9), daughter,<sup>9</sup> wife (Hos 2; Ezek 16; 23), foundling (Ezek 16), slave (Deut 5:15;

<sup>3</sup> For Israel as the family, see Exod 16:31; 40:38; Lev 10:6; Num 20:29; Isa 5:7; Jer 2:4, 26; Hos 1:4, 6; 5:1; 6:10; Amos 5:1. The head of the family is thus to recite during the harvest pilgrimage festival: Jacob/Israel is "my father," who descended into Egypt and there became "a great nation, mighty and populous" (Deut 26:5-9; Perdue 1997b:231).

<sup>4</sup> Cf. Gen 1:28; 2:21-24; 9:1; 12:1-4; 13:14-17; 15:1-6; Deut 28:4, 18; 32:18; Ps 139:13-16; Prov 8:22; Hos 11:1-3; Jer 1:5.

<sup>5</sup> Cf. Exod 22:21-24; cf. 3:7; 23:9; Deut 10:18-19; Ps 9:10-11; 34:6; 146; Prov 14:31; 17:5; 22:2).

<sup>6</sup> Cf. Exod 4:12; Jdg 13:8; 1 Ki 8:36; Job 34:32; 36:22; Ps 25:12; 27:11; 86:11; 119:33, 102; Isa 2:3; 28:23-29; 50:4-9.

<sup>7</sup> Cf. Exod 15; Jdg 5. Even after the establishment of standing armies during monarchy, the portrait of Yahweh as warrior continued throughout the first temple period (Deut 7:16-26; 2 Sam 2; 7; 24; Ps 46; 48; 76; 89; 97; Hab 3) and into eschatological thinking of the second temple period (Dan 7; 12; Zech 9:13-15; 14:3-4).

<sup>8</sup> Yahweh is here presented as a mother. Thus it is doubtful that the oppression and exploitation women experienced then and now in patriarchal societies would be eased by changing the metaphor used for God from that of a father to a mother or any other appropriate feminine one. In metaphoric perspectives, 'he' could be a mother and 'she' a father.

<sup>9</sup> Cf. Isa 1:8; cf. 10:32; 16:1; 22:4; 62:11; Jer 4:11, 31; 6:2, 14, 23, 26; 8:11, 19, 21, 22-23; Mic 1:13; 4:8, 10, 13; Zeph 3:14; Zech 2:14; 9:9.

15:15; 16:12; 24:18, 22),<sup>10</sup> and resident alien (Gen 15:13; cf. Deut 26:5-9; Exod 22:21; 23:9; Deut 23:7). Yahweh's compassion for resident aliens is a radical one. For this reason, the Israelites were commanded to love and care for the resident alien (Deut 10:19) as oneself (Lev 19:34), "for in so doing, one actualises God's own love and care for the stranger, that is, the other, who lives outside the immediate protection and support of his or her own family" (Perdue 1997b:233-234).

The ideal marriage, according to Genesis, was a monogamous one based on mutual trust and love, blessed with children. Upon marriage, a woman moved from her father's protective authority to her husband's protective authority, yet having her own worth and dignity. Chastity before marriage was absolutely imperative on the part of the woman. Adultery on the part of the wife wrecked her marriage, irrespective of whether the punishment was death or divorce. A divorced woman who married again could not be taken back by her husband because she had become "unclean." A good wife was God's best gift to man and so he should be faithful to her (Stienstra 1993:70-95). Parents, especially the father, were to protect, educate, and provide for their children, within a loving and healthy familial relationship environment. Children in turn were to obey their parents and take care of them when they became old (cf. Köstenberger 2004:31-60; King & Stager 2001:40-48). This ideal marriage and family relationships were the very metaphors used to describe the relationship, broken relationship, and restored relationship between Yahweh the husband and father and Israel his wife and children.<sup>11</sup> Thus, in Israel's theological-ethical reflection and discourse, the family became the metaphorical or symbolic world for expressing the theological-ethical themes of covenant and obligation, redemptive history and creation (Perdue 1997b:254).

Having said that God's revelation was received and experienced through the patriarchal familial metaphors, this does not, however, mean that patriarchy should be a blueprint for all societies of all ages. The Scriptures should be adapted to the contemporary culture and language if the revelations

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<sup>10</sup> See also Exod 13:3, 14; 20:2; Deut 5:6, 15; 6:12; 7:8; 8:14; 13:5, 10; 15:15; 16:12; Jos 24:17-18; Jdg 6:8-9; Isa 50:4-9; Jer 34:13; Mic 6:4, where Israel is portrayed as a family of slaves whom Yahweh redeemed from Egypt (Perdue 1997b:228, 233).

<sup>11</sup> From her studies of the metaphor of Yahweh as the husband in the book of Hosea, Stienstra (1993:96-126) comes up with the following further and interesting metaphoric nuances expressing the husband-wife relationships between Yahweh and Israel: From this, several other metaphoric nuances further develop: Yahweh may divorce his wife, Yahweh may expose the nakedness of his adulterous wife, nakedness is shame, Yahweh may kill his adulterous wife, Yahweh has children by his wife, Yahweh's wife commits adultery, Yahweh's wife puts her trust in her lovers to provide for her rather than in him, Yahweh tries to restrain his wife, misery may cause Yahweh's wife to repent and to return to him, Yahweh is eager to take back his wife in defiance of the law, Yahweh's power over his wife is absolute, idolatry is adultery, Yahweh re-woos his wife, Yahweh transports his wife back to their happy honeymoon days, Yahweh will provide for his wife again, Yahweh will erase all memories of his wife's unfaithfulness, Yahweh will completely renew his marriage, Yahweh will restore the virginity of his wife, Yahweh will never repudiate his wife, and the people will recognise Yahweh as husband.

are to be intelligible and relevant. Ancient Israel was a patriarchal society. This was most probably the case for the use of patriarchal metaphors and expressions in the Old Testament. However, it should be noted that a metaphor can also develop into an ideology. Thus, in order for the firstborn and patriarchal metaphors in the Bible not to become ideologies, emphasis should be placed more on its responsibilities other than privileges and authorities.

A tripartite link between primogeniture, patriarchal family, and family land is also further linked to familial solidarity and community. The family land was where past familial memories are cherished and present familial solidarities and community life lived and enjoyed through individuals members of the family shouldering responsibility for the corporate families and vice versa. It was difficult to know which one came first, family solidarity or the family land. They were embedded in one another. The modern concept of individualism was not known in ancient Israel, although a basic understanding of individual responsibility within the larger corporate whole began to develop during the exilic periods largely because of the devastating disruption of the families caused by the Assyrians and Babylonian conquests and subsequent exiles (cf. Deut 24:16; 2 Ki 14:6; Jer 31:29-30; Ezek 14:12-20; 18:1-32; cf. Perdue 1997b:237-239). However, by and large, pre-exilic, exilic, and post-exilic Israelites remained conscious of their solidarity and community. This collective identity and community shaped individuals' life and relationship within the family and society (see Hagedorn 2004:108-171 for discussion on the individual within society in Deuteronomy 16:18-18:22).

This has far reaching theological-ethical implications, even for Israel as an extended family. If Israel is a family, then the Israelites would have surrounded each other with socio-economic care, which means that there would be no poor in their midst (Deut 15:4). The family should extend this socio-economic care even to the marginalised poor, who included the sojourner, the day labourer, the resident alien, the widow, the fatherless, and the Levite who lived outside their own family's immediate protection as they remembered their own situations as oppressed sojourners, resident aliens, and slaves in Egypt and Babylon (Exod 20:5-6; 22:21, 26; 23:9; 34:7; Deut 5:9-10, 12-15; 10:19; 23:7; Lev 19:18, 34). It should be for this reason that the Old Testament places great importance on the family, making kingship a last resort. A wrong committed by a member would shame the entire family and disrupt family solidarity (Perdue 1997b:238-239), which would further adversely affect one's third and fourth generations (Exod 20:5-6; 1 Sam 2:12-4:18; 1 Ki 15:3; 2 Ki 21:19-22).<sup>12</sup> Repeated references to Israel's ancestors in the Bible are strong indications of the

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<sup>12</sup> Although solidarity of the family, clan, tribe, and nation was an ideal norm, it should, however, be noted that the ideal solidarity and community aspect of the family, even Israel as a family, was not always realised (cf. Isa 1:17; Jer 7:6;

family solidarity and community identity (Dearman 1992:130). It would appear that many of societal ills today such as loneliness, homelessness, poverty, hunger, and crime could be healed and reduced if the families and kin groups are bonded together in solidarity and thus surround one other with concern and care.

This understanding and experience of family solidarity became formally and morally expressed in ancient Israel's theological-ethical relationship with God in terms of covenant and obligation. This is the most significant feature of the Israelite family that may serve as a social basis for contemporary theological-ethical understanding of the family. The family provides corporate identity and solidarity for its members, which in turn provides the primary locus for human existence, social interaction, social roles, moral value, and religious belief (Perdue 1997b:253). This defines the relationship between Yahweh and Israel as his family on the one hand, and between the members of the Israelite family, on the other. A tripartite relationship between Yahweh, Israel, and the land is best understood only if Israel is seen as an extended family. The implication of this is that the economic, social, and religious realms of ancient Israel could not be separated. Thus, had the traditional family and clans collapsed, it would have serious social, economic, and religious repercussions. This may have been the reason for a good deal of prophetic protests to have focused on the threat the monarchy posed to the family, which would have serious impact on the relationship between God, Israel as the family, and the land. For the prophets, if the family was undermined, then the relationship with Yahweh would be threatened (cf. Isa 5:8-10; Mic 2:1-3, 8-9; 7:5-7). Should the family disappear, Israel would have had to look elsewhere for a social reality to give shape to their theological-ethical articulation (Perdue 1997b:239-243).

With great privileges come great responsibilities. As a privileged, chosen and covenanted people/family of Yahweh (Exod 19:5; Deut 4:37-40; 7:6; 14:2; 26:18), the way for Israel to have a future is to wholeheartedly obey the covenant stipulations (Dearman 1992:130). Although every individual is expected to play their part in the observance of covenant stipulations, Deuteronomy places greater responsibilities on the shoulders' of Israel's "firstborns" (leaders) – court officials (Deut 17:9-13; cf. 19:17), the king (Deut 17:14-20), prophets (Deut 18:22; 34:10-12), priests (Deut 10:8-9; 12:12, 19; 14:27-29; 17:9-12; 18:1-8; 27:14-16; 31:9-13), even military officials (Deut 20:5-20) – to lead God's family in wholehearted observance of covenant stipulations (Dearman

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22:3; Amos). Some of the reasons could be that during the first temple period, royal policy dictated loyalty and responsibility to monarchy, kingdom, and temple were to take precedence over loyalty and responsibility to the family, clan, and tribe. At other times, it could be because of the enormity of the problems. For example, the large number of refugees from northern Israel who ran away to Judah, particularly to Jerusalem, after the Assyrian conquest of the Northern Kingdom would undoubtedly place a large scale socio-economic strains on both the monarchy and the families' capacities to provide care (Perdue 1997b:238-239).

1992:137-142; see also Fachhai 2001 for Old Testament covenants as land covenants). The “firstborns” today – political, community, and religious leaders today – too have great responsibilities to influence and lead society with integrity of heart and skilful hands (Ps 78:72). Interpreters and teachers of the word of God can influence others either towards knowing God and having faith in the Bible or losing faith in God and the Bible (Jas 3:1). The fact that a son had to be made the firstborn in case of the incompetence or problems arising with the biological firstborn indicate the importance of the preservation of the firstborn as the office of familial responsibility. From this perspective, primogeniture as familial responsibility to love, provide, protect, and educate members of the family and maintain healthy familial relationships are relevant for all societies of all generations, be it an egalitarian, matriarchal, matrilineal, matrilocal, or patriarchal society.

The family in ancient Israel in its diversity was formed, shaped, and sustained by the core of corporate identity and responsibility, with the father as its head. The firstborn was next to his father in shouldering all these familial responsibilities and maintaining healthy and loving familial relationships while his father was alive and took full responsibility in the advent of his father’s death or incapacitation. Asserting that the family is a microcosm of Israel’s worldview, Perdue (1997b:254) rightly encourages that the formation of our own contemporary ethical paradigm should also be informed by the Scripture. We, too, must learn to envision not only our own society but also all creation as a place for human dwelling and as a collection of family households, in which all peoples and creatures have a place to dwell and to live.

In Chapter One and elsewhere, we discussed criticisms against patriarchy for its alleged marginalization, oppression and exploitation of women, children, and the weak and the poor then and now. This is not contested. Wrongs should be corrected. However, owing to the fact that many modern societies continue to practice patriarchy in one form or another and patriarchy is here to stay for some unforeseeable time in some societies, a gentle and wise approach to the issue is imperative. This is not to advocate that the patriarchal familial system should remain a blue print for all societies of the world. It is to propose a cautious and gentle approach towards the modification and reformation of patriarchy within as a familial responsibility. This will better serve the interest of the family and society, especially its women members, other than an attempt to change the entire structure. The latter could have a counter productive effect and thus become a disservice to women in the society whom the intended change purported to serve.

As a religio-political and socio-economic entity, the patriarchal family members of ancient Israel were bound by the covenant and its obligations. A wayward member of the family, including the

father himself, can be heavily punished according to the legal instructions. This should enlighten and challenge the present day fathers and big brothers to fulfil their paternal and firstborn responsibilities and maintain healthy family relationships for the betterment of the family, society, and nation. This is a relevant theological-ethical teaching for all societies of all generations.

As noted earlier, it is important to place primogeniture and patriarchy we have discussed thus far within the central theology of the book of Deuteronomy and the Deuteronomistic History. A brief statement of Wellhausen (see Dearman 1992:129) captures much of the essence of the Deuteronomic theology: “There is no God but Yahweh and Israel is his servant (i.e., prophet).” To this, Dearman (1992:129) concludes:

Deuteronomy understands Israel to be bound together by social obligations as a result of its historical experience. In one sense Israel is a community of brothers, like a large family where kinship and shared experience give every member of the community a certain status. This is reflected in the term brother [Xā], used in the sense of *fellow-Israelites*. Even those of the community who have lost property and social autonomy are known as brothers (Deut 15:2-3, 7, 9, 11-12) (emphases his, and Hebrew word replaced his transliteration).

According to Deuteronomy 15:12, the term “brother” is not necessarily gender-related, but includes males and females of Israel as a family unit (Dearman 1992:129, n. 13). This concept of brotherhood should also correspond to the smallest family unit of *ba tyb* where its male and female members should have equal dignity, value, and worth as “brothers” treating each other with the utmost respect and sensitivity. The ideal and normative relationship that should exist between Yahweh and Israel and between individual Israelites, according to Deuteronomy, is a relationship of love and trust (Deut 4:37; 7:5; 8:5; 10:12-15; 11:1, 13, 22; 14:1; cf. Rofé 2002:13). Deuteronomy is a book of “divine commitment and human obligation” (appropriated from Freedman’s [1997] title on his selected writings). It is a book of life. The obligation for humankind is to choose life, not death.

The central motif of the Deuteronomistic theology is blessings for the observance of Yahweh’s instructions and curse for violations of it. The implication of this to our study in relation to familial responsibilities is that when the husband and father fulfils his familial responsibilities of love, protection, and provision, and maintains healthy familial relationships, the result would be peace and harmony in the family. When he fails to do these, the consequence would be a chaotic broken family (cf. Browning 2001:243-260 and Köstenberger 2004:25-30 for discussion on world family trend today, i.e., the decline of and response to family values). Dobson (2001) has captured this sentiment vividly when he laments about men’s failure as husbands and fathers in many societies of

the world today. When fathers and husbands failed to shoulder their familial responsibilities and maintain loving and healthy familial relationships, the consequences are the breakdowns of the families. Women and children are usually the ones who suffer and disoriented by such a situation. This in turn leads to many other social problems such as drug-addiction, alcoholism, gangsterism, killing, theft, and prostitution.

Nations that are populated largely by immature, immoral, weak-willed, cowardly, and self-indulgent men cannot and will not long endure. These types of men include those who sire and abandon their children; who cheat on their wives; who lie, steal, and covet; ... and who serve no god but money (Dobson 2001:65).

With the decline in solidarity and community of the family as a result of the exile, we see the emergence of voluntary sects in the later Second Temple period which “should have given at least some of their members the economic and emotional security which the traditional family was meant to provide (Blenkinsopp 2001:182). Again, this is another expression of the importance and necessity of the family. These voluntary organisations did not replace the family, but rather replicated it, thus providing familial atmosphere, love, and affection for those who have lost their families or could not live a family life because of poverty and other problems.

We have noted in Chapter One and Excursus Two that primogeniture is more of a responsibility than a privilege in the Marâ society (this researcher’s society) in North East India.<sup>13</sup> We have also highlighted in Excursus Three that primogeniture as a familial responsibility is the belief and practice of the Marâ evangelical Christians. Thus, this researcher has seen and experienced the importance and good effect of primogeniture as familial responsibilities. Therefore, for this researcher, it is impossible to over-emphasise the importance of presenting primogeniture, patriarchy for that matter, as familial responsibility. The family is here to remain as a necessary institution whichever shape and mode it takes. Empirical evidence shows that many societies will continue to practice patriarchy in one form or another for years to come. Therefore, seeing fathers who failed their families and older brothers and sisters who failed their younger siblings resulting in the alarming family disintegrations in many societies, it is of paramount importance to present and emphasise primogeniture and patriarchy as familial responsibilities.

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<sup>13</sup> In the Marâ society, the eldest son has heavy responsibilities. He is to be a good example to the younger brothers, to help the parents in providing for and protecting the family, to represent the father in court and any other matters when the father is unable to attend, and to take over family responsibilities if the father dies prematurely or becomes incapacitated. Interestingly, a recent science research by Petter Kristensen and his colleagues at the University of Oslo in Norway, who reviewed 250,000 data collected from 18- and 19-year-old men drafted into Norwegian military between 1985 and 2004, who took intelligence tests as part of their compulsory military service, discovers that the firstborn children score significantly higher in IQ tests than their younger siblings. However, the researchers contend that the difference is because of social, not biological, factors, as younger siblings too have higher IQs if they are raised as an eldest child following the death of an older brother or sister (Khamsi 2007). For the Old Testament, as noted above, biology, sociology, and theology are all given as reasons for associating special significance with the firstborn.

## 5.4 LIBERATING EXCEPTIONS TO THE RULE

The Old Testament is notoriously patriarchal. According to Priestly theology, the woman and the man were both created in God's image, blessed, commanded to populate the earth, and to rule over creation together (Gen 1:26-28). However, in actual life this did not lead to an egalitarian world for men and women. This is attested even in other Priestly legal instructions. On its part, the older tradition of Genesis chapter two gives the disobedience of man and woman in the garden as the reason for the woman's multiple pregnancies, for men's ruling over her sexuality in order to produce needed offspring, and for the wearisome toil imposed on both sexes, which was necessary for the family to sustain a subsistent life (Perdue 1997b:245).

In the family daily life, women were excluded from inheritance and succession. Within the system of inheritance by sons only, the firstborn was the prime heir who would continue the family name and land. As noted in Chapter One, genealogies were preponderantly male, largely through the lines of the firstborn son. Legal instructions were addressed to men, not women. Masculine forms for generic speech were often used. Most characters in biblical literature are male. Men dominated in public life (rulers, judges, law, payment of women's vows, etc.). Only males could become priests (Perdue 1997b:246). This male-centeredness reached an ideological level to the extent that it became a blueprint for familial system in ancient Israel. A system normally developed into a type of institution ("ism") or ideology. We have seen this in communism, socialism, capitalism, even in Christianity or 'Christianism'. The same is true of patriarchy. A social system of placing familial responsibilities on the father and the firstborn too seemed to have gradually developed into patriarchal ideologies, with primogeniture is one of its manifestations. Thus by the turn of the third millennium, the firstborn would appear to have become a well established office.<sup>14</sup> When a system becomes an ideology, it may not be criticised anymore. Anything above criticism normally becomes vulnerable to abuse. Thus it goes without saying that patriarchy as an ideology is abused to exploit and oppress women, children, the weak and the poor, then and now. However, it should be noted

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<sup>14</sup> But see Greenspahn and Mendelsohn who argue against this. Citing anthropologist Lowie (1920:248) who asserts that primogeniture was relatively rare in ancient societies, Greenspahn (1996:72-75) forcefully argues that there is no conclusive textual evidence that support primogeniture as automatic and universal in the ANE. In other words, for Greenspahn, there is no such permanently established office of primogeniture. In the same vein, although Mendelsohn (1959:40) is right in asserting responsibility as a reason for according the privileged status in inheritance to the firstborn in ancient rural agrarian societies, he nevertheless concludes that the law collections of Lipit-Ishtar and Hammurabi make no reference to the privileged position of the eldest son, which means primogeniture was not universal during these periods. But these arguments collapse according to our research on primogeniture in the ANE in chapter three, the practice of primogeniture in one form or another in the ANE was attested throughout the last three millenniums BCE including the law collections of Lipit-Ishtar and Hammurabi.

that there are surprising exceptions to the rule of that dares to redefine the patriarchal culture of ancient Israel.

One such indication is in the application of the rule of primogeniture. Our analyses of the Ancient Near East texts in Chapter Two indicate that primogeniture in one form or another was a common practised custom in most of the Ancient Near East societies. Our studies on primogeniture in the Old Testament in Chapters Three and Four, too, indicate that the practice of primogeniture was common in ancient Israel as well. However, as asserted earlier, the rule of primogeniture was not followed on many occasions. In some instances it may have been a “characteristic idiosyncrasy of Ancient Near East law, namely, that fathers may designate their ‘first-born’ on a basis other than biological priority” (Mendelsohn 1959:38-40). In other instances, especially in Old Testament narratives, the firstborns were displaced in favour of younger sons, ascribing the resultant greater good of the family and kingdom as the theological-ethical qualification for the violation of the tradition (see also Greenspahn 1996:73).

We have noted in chapter five that the Torah includes both imperative legal instructions and indicative narrative instructions. In the past there was a tendency to regard legal instructions as more Torah than narrative instructions. But it should be clear that both imperative legal instructions and indicative narrative instructions are equally the Torah's. In all the firstborn displacement narratives, we find the rhetorical emphasis of disobedience as a common denominator. Hagar became proud and Ishmael mocked Isaac in the Ishmael-Esau narrative. Esau married a Hittite wife to the distress of his mother Rebekah in the Esau-Jacob narrative. Reuben defiled his father's bed in the Reuben-Judah-Joseph narrative. Absalom and Adonijah claimed their thrones prematurely without following proper channels and procedures. They also undermined their father's (the king's) authority.<sup>15</sup> For the narratives, obedience to God is more important than maintaining the contemporary society's rule of primogeniture. The displacement of the firstborn thus redefines and qualifies patriarchy. It indicates that primogeniture is conditional – the prerogatives would be accorded to the firstborn son on the pre-condition that he is totally obedient to God (and his parents). Obedience is the central theme of the Deuteronomic theology as well. This would appear to be basically the reason for bringing the case of a rebellious son (Deut 21:18-21) immediately following the instruction of primogeniture (Deut 21:15-17). These exceptions of displacements of the firstborn sons indicate that Yahweh's prime concern is not for the maintenance of patriarchal

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<sup>15</sup> Although there are implicit indications of the influence of the beloved wives in choosing the prime heirs in these narratives, except in the Esau-Jacob narrative, the rhetorical emphases of disobedience on the parts of the firstborns are explicit reasons for their displacements.

hierarchy, but obedience and sensitivity to his will. This is a profound theological-ethical message in the firstborn displacement narratives.

Having said that the firstborns lost their prerogatives because of their disobedience, it should also be noted that, in many instances, it was not the firstborns' disobedience that resulted in the choice of younger sons. Indeed, a surprising thread that runs throughout the Scriptures is that God chooses and uses men and women, not through the established societal hierarchy, but from the least and unexpected, the unlikely candidate; for example, Moses, Samuel, David, Daniel, etc. In other words, God's intervention is not bound by the established societal hierarchy; he chooses and uses whoever is suited and whoever is obedient. This is another indicator that patriarchy is not God's static blueprint for how a society should function. If patriarchy is God's blue print for all the societies of the world, then God would never have violated the rule of primogeniture.

The theological-ethical priority above the maintenance of traditional societal hierarchy is manifested not only on the family [בא תיב] and on individual levels, but also on collective and national level, which we referred to as a theo-political ideology of the Israelite nation-building. God chooses and makes the emerging and youngest nation Israel the firstborn nation above all other nations. As noted above, a situation that prompted God to deliver the Israelites and give them a nation of their own was the latter's weakness and suffering under the bondage of the Egyptians. The interrelatedness between God's power and his compassion is many times incomprehensible; only suffice to say that it is good news. On the one hand, God is the all-powerful God, but on the other, he is also the compassionate God. God in his power and sovereignty could change the established societal hierarchy for the sake of his compassion for the weak, the poor, and the oppressed.

Primogeniture as a historical process, not a divine blueprint, is well attested in the Ancient Near East societies. As a result of changes in the socio-economic structure of society, the role of the oldest brother in the family or the firstborn office has been reduced to a symbolic office if not totally abolished in some societies (cf. Mayes 1989:304; Mendelsohn 1959:40). This seemed to be basically the reason why the practice of primogeniture was more prevalent in less industrialised agricultural societies. A conspicuous lacuna in the "law" of primogeniture is the punishment for breaking this "law." There is no mention of what kind and degree of punishment, either capital or fines (with or without atonement), should be served if a man violates the right of his firstborn son. This indicates that primogeniture, or patriarchy for that matter, cannot be taken as a static moral principle at par with the Decalogue, but a dynamic historical-cultural process subject to change and modification according to changing societies.

Another exception deals with the application of the general rule of “inheritance by sons only.” We have concluded in Chapter Two and Four that daughters could inherit both in the Ancient Near East and ancient Israel. Even if it usually happened in the absence of male heirs, the fact that daughters could actually inherit is significant. In a few cases daughters are presented as equal heirs with their brothers. The Laws of Hammurabi (LH §§178 &179) present a strong case for equal inheritance rights for sons and daughters, especially *nadītus*. The same practice of equal inheritance rights for sons and daughters probably existed in Egypt as well. We have also analysed dowry as an advanced payment of a daughter’s inheritance. A husband could also award his wife a house, field, and orchard. These are indeed liberating circumvention of patriarchy.

It is also interesting to note that the family goes not only by the designation “father’s house” [ba tyb] but also by “mother’s house” [~a tyb] (Gen 24:28; Ruth 1:8; SS 3:4; 8:2; cf. Prov 9:1-6; 14:1; 31:10-31), which may indicate the influence mothers exerted in the family, even as heads of the family, unless it is a trace of a matrilineal and matrilocal culture.

The imposition of certain restrictions on the ancient Israelite patriarchal family is also a significant pointer to the circumvention of the patriarchal power. It goes without saying that the family was an all important and necessary social system in ancient Israel. However, the Scriptures also impose certain restrictions on the power of the father. For example, we have considered the limitations of paternal power that the Deuteronomic instruction placed on the Israelites even in the height of their patriarchal cultural system. The Deuteronomic instruction prevented parents from taking the law into their own hands. Thus the case of a rebellious son is to be presented to the elders’ court (Deut 21:18-21). The involvement of the state in family affairs because of the increase of spouse and child abuse today is one such example. The “encroachment of state jurisdiction on the traditional household” in some countries today is in many respects a positive development (Blenkinsopp 2001:182); otherwise the weak and the vulnerable will suffer endlessly at the hands of abusive husbands and fathers.<sup>16</sup>

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<sup>16</sup> The same system in terms of religious orders is in practice in the history of Christian church. Describing it as “beyond family values,” Blenkinsopp (2001:182-183) contends that these orders also “offered alternative models by breaking the monopoly of status, honor, and prestige claimed by kinship and household, or redefining the values associated with the family. In this respect the notable indifference of the Jesus of the gospels to what are usually called family values (e.g., Mk 10:28-31; Lk 12:51-53; 14:25-27, and his sayings directed against the urge to acquire and maintain possessions and exercise control over the lives of others (e.g., Mk 10:17-22, 42-45; Lk 12:25), both well developed tendencies within the traditional household, have not always received due attention.” Blenkinsopp (2001:183) then rightly concludes that “throughout the biblical period the household was the fundamental social form of life, but no less than other institutions it could serve to diminish as well as to amplify the scope of human living.”

In the final analysis, it is true that, generally speaking, patriarchy was the typical operative form in the Israelite family. However, it is necessary to distinguish what is “typical” from what is necessarily “normative” for ancient people as well as for contemporary family life. For example, the prerogatives of the firstborn son, concubinage, slavery, segregation, and even “genocide” received social and even divine sanction in the Old Testament. Few would argue that these should be normative practices for contemporary familial and societal life today. Thus “to attempt to transplant gender roles, the roles of parents and children, polygamy, monogamy, celibacy, and a host of other specific features of the Israelite family into contemporary cultures would be naïve. To do so would require the transplanting of Israel’s entire society to the present” (Perdue 1997b:254). However, if primogeniture and patriarchy and their fundamental theological-ethical motifs as familial responsibilities are critically engaged within the rubric of redemptive history and creation as well as within the framework of covenant and obligation, it would have meaning and import far beyond their historical and social embodiments in ancient Israel (Perdue 1997b:254).

The above exceptions to the rule surely indicate that patriarchy is not God’s blueprint for familial system that should be followed by all societies of all generations. The qualification or redefinition of patriarchy in ancient Israel as familial responsibility thus perhaps opens “important ways that critical ethical reflection can negate the sometimes oppressive structure of biblical representations of family life and values and also can shape a more humane, faithful social expression of human community in contemporary life” (Perdue 1997:246).

## **5.5 CONTRIBUTION TO OLD TESTAMENT SCHOLARSHIP**

Many nuances of different subjects in this research emerged on the basis of new readings and new understandings. However, for lack of space, we will only underline some of the major areas this research is believed to have made significant contribution towards Old Testament scholarships:<sup>17</sup>

### ***On primogeniture as a generally practised custom in the Ancient Near East and ancient Israel***

There have been arguments about whether primogeniture was universal in the Ancient Near East and ancient Israel. Chapters Two carefully analysed the existence of the practice in the Ancient Near East societies by surveying the Ancient Near East texts relating to primogeniture. Chapters

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<sup>17</sup> Not only to Old Testament scholarship, but research on primogeniture and patriarchy in the Marâ society would also be this research’s contribution towards the socio-historical studies of the Marâ society by a Marâ scholar himself. Notice that such studies in the past had mainly been done by non-Marâ scholars.

Three and Four analysed primogeniture in the Old Testament. The overwhelming textual evidence of both Ancient Near East texts and the Old Testament swings the balance in favour of the theory of a general practice of primogeniture in both Ancient Near East and ancient Israel, albeit in variable degrees and in different forms based on differences in geographical and archaeological period. This would be a significant contribution the present research makes to both Ancient Near East and Old Testament (ancient Israel) studies.

***On primogeniture as familial responsibilities and relationships***

There have not been adequate researches on primogeniture, patriarchy for that matter, as familial responsibilities. The present research is particularly attentive to this rubric of patriarchy. Family members, especially husbands and fathers, fulfilling their familial responsibilities and maintaining healthy familial relationships are thus the present research's significant argument as a relevant theological-ethical application for all societies of all generations.

***On patriarchy not representing a static divine blueprint for all societies of all generations***

Numerous works on patriarchy have appeared in recent years, especially from feminist hermeneutical schools. And the research is steadily and encouragingly progressing. However, thus far this researcher has not come across any work that uses primogeniture as a point of departure for understanding patriarchy. This research thus fills this conspicuous *lacuna*.

Based on exceptions to the rules of primogeniture in particular and inheritance rules in general, the finding in this research is that patriarchy was not static, even in ancient times. There was no uniform form of patriarchy. How it was practised different from region to region and generation to generation. Some societies practised more female-friendly patriarchal system, for example, this researcher's Marâ society in North East India, while the marginalisation and oppression and exploitation of females were the marks of patriarchy in other societies. A few societies were matrilineal, for example, the Elamites in the Ancient Near East and the Khasi-Jaintia people in North East India. This is a strong indication that patriarchy, even a particular form of patriarchy, could not be God's blueprint for all societies of all generations.

As noted above, even within societies who practised primogeniture and thus patriarchy, the rule of primogeniture was not often followed. Firstborns were often displaced in favour of younger sons. This was theologically and ethically qualified as well as politically and ideologically appropriated.

These theological-ethical qualifications as well as political-ideological appropriation of the primogeniture custom and its violation based on socio-economic and religious-political changes of society indicate that patriarchy according to the Old Testament was not God's static blueprint for all societies of all generations. It was a dynamic socio-historical and theological-ethical process which was subject to change, modifications, re-interpretation, and re-appropriation according to socio-economic and religious-political changes and developments of a given society. This is a significant contribution of the present research makes to Old Testament scholarship.

***On the displacement of the firstborns by younger sons as a theo-political construct of the Israelite nation-building***

In recent years, several works have appeared on the subject of the firstborn in the Old Testament, namely; Mendelsohn, Milgrom, Syrén, Bendor, Greenspahn, Brin, etc. However, none of them, except Syrén, have approached the narratives' displacement of the firstborn from a theo-political ideological perspective of the Israelite nation-building. Syrén approaches the subject from a theological perspective, but falls short of studying it against the overall backdrop a theo-political ideology of the Old Testament, especially its idea of Israelite nation-building. Israel's desire and pride to be the firstborn nation above all other nations is best understood against the backdrop of the concept of sanctity, significance, and highly esteemed position associated with the firstborn son. Syrén also fails to address this locus. Thus, as noted above, reading the displacement of the firstborn sons in favour of the younger sons in the narratives as a theological-ethical redefinition and qualification as well as political-ideological re-appropriation of patriarchy, is a major and significant contribution the present research makes to Old Testament scholarship.

***On socio-rhetorical interpretation of Deuteronomy 21:15-17***

So far, no scholar has interpreted the primogeniture text of Deuteronomy 21:15-17 socio-rhetorically. Thus all the questions asked in this endeavour would be significant contributions the present research makes to Old Testament scholarship.

***On narratives as Torah***

The present research attempts to correct the misconception in the past which regarded the imperative regal instructions of the Pentateuch more Torah than the indicative narrative instructions of the Pentateuch. After reading the present work, it should become clear that both imperative legal

instructions and indicative narrative instructions are equally the Torah's. This would be an added voice to this school.

### *On evangelical critical scholarship*

Establishing the Mosaic authorship of the Pentateuch has been the trade mark of the evangelical Christianity. In all honesty, this researcher believes that Moses was a historical person. Based on some “internal evidence”<sup>18</sup> and in line with Jewish and Christian tradition,<sup>19</sup> there is a strong possibility that Moses was the one who wrote and spoke the bulk of the materials in the Pentateuch. This view is supported by striking similarities between some of the Pentateuchal texts and those of the second millennium Ancient Near East texts.<sup>20</sup> But it is also scholarly fully established that the materials of the Pentateuch had gone through stages of editions and additions until it reached its final form as we have it today. Texts such as Genesis 12:6; 14:14; 36:31; 47:11; Exod 1:11; 12:37; Numbers 12:3; 33:3, 6; Deuteronomy 1:5; 34:5-6, 10; many repetitions, etc clearly support the presence of such theologian-historian-redactor(s). Granted that some of the materials in the Pentateuch were written by authors other than Moses and that some of Moses’ original writings/speeches have been edited or new materials were added to the original Mosaic corpus, these do not diminish the Pentateuch as the holy, living, and authoritative scriptures.

Jesus did not write the Gospels of the New Testament. But for Christians, the Gospels are authoritative sources of the words, life and ministry of Jesus. In the same way, even if Moses did not write everything in the Pentateuch and even if some of his writings/speeches have been edited, the Pentateuch is still the word of God. It is the authoritative sources of the words, life and ministry of Moses. This view is supported by Tigay (1996: xxvi):

According to a talmudic tale, when Moses was on Sinai receiving the Torah he was shown the classroom of Rabbi Akiba, the great legal scholar of many centuries later. Moses grieved when he could not understand the discussion, until he heard a student ask Akiba for the source of what he was saying, and Akiba answered, “This is a law given to Moses at Sinai.” The great structure of Jewish law that eventuated from Moses’ original teachings is ultimately his, even if he would not recognize the forms it would eventually take. In that sense the

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<sup>18</sup> For example, Exodus 17:14; 24:4; 34:27; Leviticus 1:1; 27:34, passim; Numbers 33:1-2; Deuteronomy 1:5; 31:9, 22, 24; Joshua 8:31; 1 Kings 2:3; 8:53; 2 Kings 14:6; 18:12.

<sup>19</sup> For example, Matthew 4:4, 7, 10; 19:7-8; Mark 7:10; 10:3-5; 12:19, 26; Luke 2:22-23; John 5:46-47; Acts 3:22-23; 7:37-38; 15:1; Romans 10:5, 19.

<sup>20</sup> For example, the Gilgamesh Epic and the flood story of Genesis 6-9, Enuma Elish and the creation story of Genesis 1-2, Laws of Hammurabi and numerous passages in the Old Testament law (legislation), Hittite treaties and Old Testament covenant. For other similarities, see Youngblood 1985:6-7.

writers of Deuteronomy, too, have given us the teaching of Moses, that is, a statement of his fundamental monotheistic teaching, designed to resist the assimilatory temptations of the writers' age and to preserve monotheism for the future (see also Levine 1989:166).

A stand should also be taken concerning the Bible as rhetorical piece of literature. Since the Bible is a combination of books, it sure is a piece of literature. Nevertheless, it should be noted that the Bible was not written to become a masterpiece of literature. Literature does not create the Bible; the authors of the Bible used literature to convey their messages. Therefore, one should be careful not to dissect the Bible into minute pieces of tradition and literature. To do so, as Sarna (1989: xviii) warns, will miss the coherent message of the Scripture.

The above argument would be an added voice to the evangelical critical scholarship. A critical engagement with the Scripture is not incompatible to the evangelical faith and practice. One could be both a strong evangelical believer as well as scholarly well-grounded interpreter of the Bible.<sup>21</sup> If the Scripture is to be trusted, evangelical Christians have to be willing to let the Scripture undergo scrutiny. If a church imposes its official dogmatic theology on its members without giving any room for independent analysis of the text by its members, the church dogma can then become an ideology. The Reformation was, therefore, in a sense a critique of the church's official doctrines as church ideologies.

## **5.6 AREAS IDENTIFIED FOR FURTHER RESEARCH**

### *Similarities between traditional Marâ society and ancient Israelite society*

Similarities between the customs and cultures of the Marâ society and ancient Israel, such as creation/origin stories, sequence of social structures, the family inheritance land/*lyubô*, primogeniture, proverbial culture, etc will serve as interesting topics for comparative research.

### *Genesis 2:24 as a trace of matrilineal and matrilocal culture*

Genesis 2:24 which stipulates that a man shall leave his father and mother for his wife as a possible trace of the recent matrilocal custom of ancient Israel is one area this researcher is interested in doing further research.

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<sup>21</sup> This is what this researcher experienced as the policy of the Old and New Testament Department of the University of Stellenbosch. A student is allowed to present his or her argument from his or her frame of reference; albeit a sound and logical arguments.

### *Theological-ethical interpretation of patriarchy*

The present research is limited to “towards” a theological-ethical understanding of patriarchy in ancient Israel. Going beyond the “towards” and researching a fully fledged theology and ethics of patriarchy would be another area of major research this researcher would like to continue to engage. As noted above, patriarchy is here to stay in one form or another in some societies for some time to come. Therefore, it should be reformed within. Patriarchy as familial responsibilities in contradistinction to patriarchy as a dictatorial authority and privilege should be emphasised. This is an area that has changed this researcher’s attitudes towards patriarchy. It can change others as well. Because of irresponsible husbands and fathers whose ideology of patriarchy is solely a privilege and authority that should not be challenged and criticised, women and children (especially women), have been marginalised, exploited and oppressed in many societies then and now. Women are yet to be liberated and given opportunity to reach their fullest potential in many societies, especially in Africa and Asia. This researcher wishes to promote equality between men and women in all walks of life, yet remain sensitive to irreplaceable gender roles, such as childbearing and showing motherly love (mother), living a life of responsible fatherhood (father) through writings, preachings, and teachings.

### *Theo-political ideological approach to some of the Old Testament texts*

This researcher is interested in further developing a theo-political ideological reading of some of the Old Testament texts, as he believed that some of the texts would be best understood if read against this backdrop. This fourth and last area warrants further motivation.

Beginning with the United States, the so-called secular democratic movements of the modern world take pride in the separation of state (politics) and religion.<sup>22</sup> Religion is confined to matters of individual’s personal faith and life. But, as argued above, politics and religion were integrated

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<sup>22</sup> For discussion on separation of church and state in the United States, see Stokes (1950), Beth (1958), Sorauf (1976). On their part, the ideology of separation of state and religion also affected later Judaism and the politics of Israel, especially in the wake of the disastrous Roman wars, in such a way that Judaism was redefined in sacral and ritual terms as a ‘religion’ in the Christian sense, while responsibility for the political needs of the Jews as a people was transferred to civil, essentially secular, institutions. With the revival of explicit political inquiry in the Middle Ages, Jewish thinkers and leaders who otherwise relied exclusively on the Talmud went back to biblical sources for ideas on proper political behaviour and institution building. Centuries later, they find an echo of that process in the way that Zionists sought to base on biblical sources their quest for renewed Jewish statehood in the land of Israel (see Elazar 2000:1077-1079 who also laments the artificiality of separating the Jews as a people from Judaism as a religion).

ideologies in the Old Testament.<sup>23</sup> Despite the current reluctance among some scholars to adopt a single central theme (see House 1998:56 and works cited there), a theo-political ideology of the Israelite nation-building is an issue that permeates many parts of the Old Testament. Indeed, the Old Testament is in many senses interpretations and re-interpretations of events in the Israelites' national political movements and identity formation. Secular politics makes no place for godly intervention on any particular occasion. In contrast, the Old Testament insists that the Israelites should carry their politics of nation building within the framework of the belief of and commitment to the existence and worship of one God (see also House 1998:56), that is, they should carry out their national political actions according to the will and ways of Yahweh. All citizens are to be participants of this movement by living their life according to the Torah (instructions) of Yahweh.

Having argued that religion and politics are integrated in the Old Testament, it does not, however, mean that this research advocates the system as a blueprint for all the nations of the world, except that it suffices to say that both integration and separation have strengths as well as weaknesses. It is a scholarly attempt to present the Old Testament as it is, and not as what one wants it to be or to mean. To this, Neusner (2000:1070) rightly concludes:

The Pentateuch portrays Israel as “a kingdom of priests and a holy people” and further takes for granted that his “kingdom” or “people” forms a political entity, exercising legitimate violence. Scripture therefore understands Israel not merely as a church or a voluntary community but an empowered society, with a government, laws, and institutions.<sup>24</sup>

Some modern people groups, for example the Marâ people, also identify with and legitimate their ethnic/national political struggle with that of the Israelites' national political struggle. The struggles of the oppressed and exploited communities find their expression in Israel's bondage in Egypt and eventual exodus. As one would sympathise with “Rachel's weeping” (the political struggle of the Israelites; Jer 31:15), many people groups' and communities' socio-economic and political struggles deserve sympathy. However, care should be taken. One can also wrongly appropriate biblical legitimation to serve one's purpose and interest. That is what we have seen in the

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<sup>23</sup> Will there still be a future glorious millennial kingdom of Jesus the Messiah in the New Testament if Israel was an independent nation with Jesus Christ as its earthly king sitting at the throne of physical Jerusalem palace? A good question! Millennialists, especially pre-millennialist, believe that “the present form of the kingdom is moving towards a grand climax when Christ will return, the first resurrection will occur and his kingdom will find expression in a literal, visible reign of peace and righteousness on the earth in space-time history. After the final resurrection, the last judgment and the renewal of the heavens and the earth, this future, temporal kingdom will merge into the eternal kingdom, and the Lord will reign for ever on the new earth” (Mounce 1995:1907).

<sup>24</sup> Neusner (2000:1074) further affirms that from the Old Testament times (prophets, judges, kings, priests) to Mishnaic (sages), and Talmudic (rabbis) periods, the law of the Torah, including Mishnah's and Talmudic laws, represent the will of God for the Israelites.

Afrikaners' political movement in South Africa. Biblical legitimation was sought and appropriated for apartheid or race theology (referred to also as separate development).<sup>25</sup> Christian European colonialists of the nineteenth and early twentieth centuries (some Christian missions too were no exceptions), also wrongly interpreted the Bible and thus regarded the subduing of the “pagan” natives and taking over their lands as a divine duty similar to the Israelites' conquest of Canaan (Bosch 1991:275; Anderson 1999:103). Women are not allowed to become leaders in many churches today on the ground that the Bible prohibits women leadership in the Church.

In the final analysis, what matters most is the relevance of the text for our contemporary society. The Old Testament does contain theo-political ideologies. Is a theo-political ideological reading of the Old Testament relevant for Christians and the world today? For some quarters of Christianity today, as soon as the word “politics” or “ideology” is uttered, it immediately resound a negative connotation because of party and petty politics of power abuse, corruption, cheating, scandal, and all kinds of systems that result in ungodly life in many countries. But that is not what the grand and nation-building politics of the Old Testament is all about. Government and politics are necessary aspects of human existence. Therefore, participation in the grand politics of building a society and nation where peace [-Wl V], justice [j pvm], righteousness [qdc], love [hbx, hbha], and kindness [dsx] rule is every citizen's God given responsibility. In this sense, a theo-political ideological reading of the Old Testament is relevant for Christians today. The Bible should continue to shape our sociopolitical imaginary, “calling rulers to account and inspiring visions of societies in which God's *shalom* may be realized” (Corringe 2006:429). Necessary and important as they are, it should be, however, remembered that government and politics are not ends in themselves, they are merely tools for the achievement of more sacred goals (see also Elazar 2000:1082).

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<sup>25</sup> According to the apartheid theology, every citizen of South Africa was classified “according to his/her particular race group (white, coloured, Asian, black) and from this flowed numerous regulations for the ‘ordering’ of community life, e.g., laws enforcing separate residential areas for each group, separate educational facilities for each group, separate government institutions for each group's ‘own affairs’, separate recreational facilities, etc” (Deist 1984:16). Meyer (2004:43) regretfully describes the South African legacy of apartheid as “... one of the most important ‘ideological holdings’ that any critical scholar trying to read the Bible in the twenty-first century in South Africa should take stock of. Our experience with Apartheid and the role that the Bible played in this project of social engineering will taint any interpretation of the Bible for a long time in South Africa.” Jonker (2001:165, 181), on his article “The biblical legitimization of ethnic diversity in Apartheid Theology”, analyses the official position document of the Dutch Reformed Church on apartheid theology, “Ras, Volk en Nasie en Volkereverhoudinge in die lig van die Skrif” (ET, Human relations and the South African scene in the light of Scripture), and concludes that “Biblical interpretation was done according to the mode of legitimisation. The present order of political apartheid was accepted uncritically, and Biblical interpretation served the purpose of reinforcing and strengthening this order. The report consciously or unconsciously wanted to provide Biblical “proofs” or “arguments” that could legitimise this policy, as well as the practical implementation of this policy in society” (see also JP Bosman 2005:9-12).

## 5.7 FINAL WORD

The past is an immeasurable stream of events which flows unendingly towards eternity; no one can master this infinite stream nor formulate its meaning in final terms; each one of us is rather constantly overwhelmed and engulfed by an endless torrent of concrete events without ever mastering it (Le Roux 2005:18).

This profound statement of Le Roux is especially true of women in the past. They had been denied equal rights with men in many societies in the name of patriarchy. They had helplessly suffered oppression and exploitation so much for so long. Sad to say, in many societies today, women are still oppressed and exploited at home, and are not given equal rights with men to hold public and religious offices. In the light of eternity, things such as patriarchy and gender discrimination become trivial and dim. Will churches who prevent women from doing teaching, preaching, and pastoral ministries complain if they see many people in eternity, who came to know God because of the preaching, teaching, discipleship, and pastoral ministry of women?

The fact that the “law” of primogeniture, which was a cornerstone of patriarchy, underwent change and modifications in the real life of Israel is a pointer to the need for adjustment and modification in the patriarchal system itself. Perhaps, this research’s finding that patriarchy is not God’s blue print for the governing of the family and society would contribute towards the establishment of godly families and communities where male and female members relate to each other as equal images of God and so treat each other with love, mutual respect and dignity. This would be eternity on earth. However, we must remember that this will become possible only if men, women, and children in the family and community love and obey God.

The firstborn displacement narratives disrupt what is natural, typical, normal, common, general, or even hierarchical. This is also in line with Deuteronomy’s theology of the love of God and obedience to him and his words above everything. Obedience is more important than hierarchy and patriarchy. This theology is further taken up by the Deuteronomistic theologian(s) that obedience will result in blessings and disobedience in curse. To this, Le Roux (2007) rightly notes that even as the Israelites had gone through that devastating and dreaded exile, for the Deuteronomistic theologian(s), if they return to God in obedience, there is still a future and hope.<sup>26</sup>

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<sup>26</sup> In a lighter note, this researcher too looks forward to life after this dissertation when he would continue to research and write using what he has learned and experienced through the long and tiring yet rewarding hours, days and nights of reading, rereading; writing, rewriting; printing, and reprinting.

With that future hope, it is befitting to conclude this research with the following great commandment (Deut 6:4-9) to love and obey God:

`dx(á, hwny>Wnyhll á/ hwny>I ag'fyl [miv.  
 ^d)am.-I kbW ^&pr:-I kbW ^bb'l.-I kB. ^yh,l á hwny>tab Tbhah>  
 ^`b)l.-I [: ~AVh; ^Wem. ykúá' rva] hLah' ~yrhDá; Wbú>  
 ^á k.l bW ^tybB. ^ÚbvB. ~B' TrBdl>^ynb'l. ~Tákvú>  
 ^m)qbw ^BkvbW %rDá;  
 ^ynk[e!yBé tpj'j d. Wbú>^dy' I [: tAal. ~TrvqW  
 s ^yr( vbw ^t)Be tzWm.-I [: ~TátkW

Hear, O Israel: The LORD our God, the LORD is one. Love the LORD your God with all your heart and with all your soul and with all your strength. These commandments that I give you today are to be upon your hearts. Impress them on your children. Talk about them when you sit at home and when you walk along the road, when you lie down and when you get up. Tie them as symbols on your hands and bind them on your foreheads. Write them on the doorframes of your houses and on your gates.

# **EXCURSES**

## Excursus One

### MARÂ SOCIETY<sup>1</sup> AS A FEMALE-FRIENDLY PATRIARCHAL SOCIETY

This Excursus and the following two Excurses form a part of the discussion in Chapter Four, “ideological and theological textures”, specifically under the sub-heading, “individual location” and “relation to groups.” The purpose of these excurses is to provide the researcher’s social and religious ideological background so that readers of this research may have an objective evaluation as to why the researcher reads and interprets particular words, phrases, and texts, the way he did.

The sequence of the social structure of the Marâ society is strikingly similar to that of the Israelite society<sup>2</sup>: *chhôhkha* (family, Hebrew *ba tyb*), *pho* (clan, Hebrew *hxpvm*), *chi* (tribe, Hebrew *j bv*), and *râh* (nation, Hebrew *ymq* or *~[*). Like *ba tyb* and *hxpvm* in the ancient Israel, *chhôhkha* and *pho* were the most active social units (for further discussion these social structures, see Fachhai, Introduction to the Marâ Society [upcoming publication 2008 by the Evangelical Church of Maraland, Siaha, Mizoram, India]).

Khaimiechhō (1995:72-73, 88-91) asserts that the Marâ society was a patriarchal one:

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<sup>1</sup> The present Marâland (ie, the boundaries where the Marâ people live), is located in the area bordered by India to the west, Myanmar to the east and Bangladesh to the south. It straddles two countries (India and Myanmar, formerly Burma). It lies roughly between Latitude 20 and 23 North and between Longitude 92 and 95 East covering an area of more than ten thousand square kilometres (all Marâ inhabited areas of both India and Myanmar) (for accurate area and location of Marâland in India, see Khaimiechhō 1995:2). West Marâland (Marâland in India) is located in the southern Mizoram State of the North Eastern India. East Marâland (Marâland in Myanmar) straddles three townships of Tlantlang, Matupi and Paletwa in the south western Chin State of Myanmar. The land is mountainous with a few valleys and flat areas along the banks of rivers. Rich in flora and fauna, bamboo jungles prevail on the lower slopes while the higher hills are thickly clothed with oaks, rhododendrons, dwarf bamboos and other kinds of trees (Parry 1932:4-5; Khaimiechhō 1995:2-6; Fachhai 1994:3-4). Although India’s seven north-eastern states are a part of the union of India, they are racially speaking neither Indians of Indo-European (Arian) origin; nor are they Dravidians. They belong to the Tibeto-Burman family of the Sino-Tibetan (which includes Tibeto-Burman, Chinese, and Tai stocks) race whose different people groups live in North East India, Chittagong Hill Tracts of Bangladesh, Myanmar, and other South East Asian countries today. The Marâ people and their language belong to the Kuki-Chin group of this Tibeto-Burman family (see Khaimiechhō 1995:9-13 and authorities cited there). Their ancestral homeland would appear to have been somewhere in southern China. The Marâ people possibly migrated from southern China via Tibet crossing the hills of north western Myanmar reaching their present habitat somewhere between the fourteenth and fifteenth centuries AD (Khaimiechhō 1995:23-24; Fachhai 1994:1-2; but see Hlychhō 1972:7 who puts it in the middle of the sixteenth century and Parry 1932:2-3 who suggests a much later date of early seventeenth century).

<sup>2</sup> Other North East India tribes also claim many similarities between them and the biblical Israelites. For this reason some groups from the Lushai and Hmar tribes of Mizoram and Manipur States of North East India claim that they are the lost tribe of Israel, the descendents of Manasseh (Bnei Menashe). The government of Israel accepted their claim and close to 1,000 Bnei Menashe from Mizoram and Manipur are currently residing as citizens in Israel. However, lately the government of Israel has re-evaluated the whole issue (see Snyder 2006). This has generated considerable scholarly debates in Mizoram – “Are we a Semitic or Mongoloid race?”

Being patriarchal, the Marâ family was practically dominated by the household head, the father or eldest son... The father was the head as well as leader and enjoyed full authority in the family... The children belonged to the father, and the mother had no share... The right to inheritance and succession was reserved for paternal descent through which clan lineage was computed... The father ... was the master of the household... He also acted as the priest.

Khaimiechhô (1995:91) further asserts that a Marâ husband treats his wife as he wishes because he acquired her by paying her bride-price. This assertion is incorrect. Even if the Marâ society practised a form of patriarchy, it was a female-friendly one where women could have a say, have value, dignity, respect and freedom. Parry (1932:285), an established authority on the Marâ people, does not directly describe the Marâ society as patriarchal, although he refers to it as a patrilineal society. During a time (early twentieth century) when the Western missionaries and colonial officials were decrying female oppression and exploitation in other parts of India, Downs (1996:1-60) observes that Marâ society was different. Similarly, Parry (1932:276-278) remarks that Marâ society did not oppress and exploit women:

Social relations between the sexes are easy and natural, men and women meeting freely on equal basis. The women are very far from being mere household drudges... [I]nside the house she is supreme...[I]t is very rare to find a Lakher who is brutal to a woman... People who beat their wives are looked down upon... Among Lakher women there is no false shame, they do not consider themselves as inferior beings, and take part in all matters in which the family is interested... Although the Lakher would be regarded by Indians as savages, ... they are ... on a higher plain of social civilization than the dwellers of the plains of India, and nowhere is this more clearly shown than in their treatment of women.

Based on this and other factors, Hutton in his “Introduction” to Parry’s book *The Lakhers* (Parry 1932:xiii-xiv) suggests that the Marâ society was first matrilineal but recently amalgamated with a patrilineal people. The following are what Hutton believes to be traces of recent matrilineal system:

- The weakness or absence of exogamy as a result of the amalgamation of patrilineal and matrilineal groups. The amalgamation broke down exogamy in both sides.
- The unusual practice of sending the bride-price by instalments, each of which is always refused until the next instalment appears, a formality which rather suggests the incorporation of strangers who can only get brides by an unfamiliar series of customary payments.
- The prohibition of marriage between half-brother and sister by the same father, whereas uterine relationship is no barrier, a rule apparently at variance with a matrilineal system.

- The maternal uncle receives a very substantial share of the bride-price, while a woman living with her husband nominates a sister to take her share of the bride-price of her daughter, thus effectively removing it from the control of her husband.
- A divorced wife has the right to retain her *okia* (highest part of a bride-price).
- The absence of any prohibition on the marriage by a younger brother of his elder brother's widow, which most patrilineal Assam hill tribes prohibit (though the fact that the Marâ wife may address her husband's younger brother by his personal name, but not so his elder brother, suggests the levirate custom was once restricted to the younger brother by the Marâs also, unless it happens that this familiarity had some special reference to the rights of the younger brother during the husband's lifetime).
- A daughter's bride-price exceeds the normal rate of her father's clan if her mother should be of a superior clan.
- The reservation of the right of his sister or the sister's son for the duty or privilege of opening the vault of the buried chief for a new internment and taking a fee for articles of value interred with the late chief, so that these heirlooms are lost to the male and secured in the possession of the female line.

Some of Hutton's observations above are correct. But being an outsider, he does not adequately understand the background and purpose of some of the customs he refers to.

#### *Weakness or absence of exogamy*

Parry seemed to have overlooked the practice of a kind of exogamy in the Marâ society. The norm prohibits marriage within one's patrilineal clan (*pho*), especially within one's sub-clan (*chhôh*). A prescriptive custom of marrying one's cousin (mother's brother's daughter) or someone from one's mother's near or distant clan ("brother") cannot be termed as endogamy (cf. Khaimiechhô 1995:80 asserts this practice as endogamy). Endogamy applies marriage within one's own group (clan or tribe) only (Deist 1984:82). According to the Marâ people, maternal uncle does not belong to one's *pho* [hxpvm] group. He is from a different clan. Therefore, marrying from one's mother's clan was encouraged and regarded as a marriage that would bring blessing to the family. But it was not practised as a binding custom. Marrying a maternal uncle's daughter (*puhpa saw hnei*) has a deep sociological meaning and implication: Mother-in-law and daughter-in-law would love and respect each other, because they belonged to the same family (clan), the man would receive blessings of posterity, prosperity, health and a long life because he would have honoured his

maternal uncle by marrying his daughter (dishonouring one's maternal uncle will result in a curse), and for maintaining one's social status especially if one's mother belonged a higher clan.

However, Hutton points out that normally it was the mother who would initiate the move to take a wife for her son from her family (the daughter of her brother, the daughter of her cousin— or distant cousin, or one from any family in her clan). Sometimes she would even ask the girl's hand as soon as the girl was born or soon afterwards (Parry 1932:307 calls it “child marriage”, Khaimiechhō 1995:99, “betrothal of children”). If this is a trace of a matrilineal custom, the custom of marrying a maternal uncle's daughter (daughter of mother's brother) could also be regarded as a kind of endogamy.

#### *Sending bride-price by instalments*

As Hutton and Parry (1932:311) admit, the Marâ bride-price was a most complicated affair, and consisted of several parts which in turn had a number of subsidiary prices attached to them. The main price was called the *okia*, and the rate of the *okia* governed the rate of all the other prices. At any rate, the custom dictated that one should never complete the payment of his wife's bride-price as a token of strong continual relationship and bond between the two families.

#### *Marriage between half-brother and sister by the same mother*

Hutton and Parry wrongly conclude that the Marâ society did not prohibit marriage between half-brother and sister by the same mother. This is a reference to an unusual occurrence. Marriage between half-brother and sister by the same mother was not acceptable, as the two persons were regarded as brother and sister. If such a marriage ever occurred, it was regarded as abnormal. Even then, when it unavoidably happened, it was tolerated on the ground that the half brother and sister belonged to different clans.

#### *Maternal uncle and mother's sister receiving their niece's bride-price*

The former was called *pumâ* (maternal uncle's/mother's brother's share of bride-price) and the latter *nôchao* (mother's sister's share of bride-price). The bride's paternal aunt also received bride-prices called “*nohchao*” (paternal aunt's/father's sister's share). These three kinds of bride-price would go to one's close blood relation, but normally outside the clan. The main purpose of a bride-price in the Marâ society was for the concern and care of the bride, her husband and her children to be. Therefore, it is not clear if this could be regarded as a trace of a matrilineal society.

*A divorced wife having the right to retain her okia*

As mentioned above, the *okia* was the highest of all the different categories of a girl's bride-price. If the husband was the one who divorced his wife, he would forfeit the whole bride-price he had previously paid and all his children of the divorced wife remain his. However, if it was the wife who divorced her husband, all of the bride-price has to be returned to the husband, except the *okia*. The reason was to enable the children of the divorced woman to remain the children of their divorced father. It is therefore not clear if this too may be regarded as a trace of a matrilineal society.

*Levirate marriage*

Levirate marriage in Marâ applied normally, but not exclusively, to a young widow with or without children. If she did not have children, and since she could not inherit her husband's property, she would have to return to her father's or brother's house if there was no unmarried brother-in-law to marry her. If she had children, it would be her choice to go if she wanted to remarry or to remain if she wanted to take care of her children even if there was no brother-in-law to marry her. In the Marâ custom, the latter was called "*kuh kheï*" meaning, staying and taking care of one's children (like a hen gathers her chicks under her wings). Normally it was the unmarried younger brother who took his late older brother's widow, provided that age difference between them was not pronounced. This was because all the elder brothers would have already been married with children. In that case, the widow of their younger brother would not want to become an auxiliary wife. A polygamist Marâ had only one principal wife; the rest were auxiliary wives.

In the Marâ language, this levirate marriage was called "*bâh*" and had a strong positive connotative meaning of love, responsibility and kinship relationship. If the family said to the young widow, *eima châ bâh aw* (literally, we will take hold of you), they were saying to her "we love you, you are our family, your children need you, we cannot afford to let you go, we could not think of you going through the shame of widowhood, so we will take hold of you for your late husband's brother". The purpose of the Marâ levirate marriage was different from that of the Old Testament. In the latter it was to beget sons for the late brother so that the late brother's name would not be wiped out from the land. In the former it was to protect and provide for the young widow and her children. Orphans and widows were vulnerable. Widowhood was a shame and it was difficult for a widow to remarry. For this reason, even if the young widow may not have any feeling for her brother-in-law, she would agree to the marriage, and the same applies to the

brother-in-law. Family, responsibility and honour (brain) came before feeling/love (heart). Thus it is not clear whether the Marâ levirate marriage can be regarded as showing a trace of recent matrilineal system.

*A daughter's bride-price exceeding the normal rate of her father's clan if her mother was from a superior clan*

Not only a daughter's bride-price would exceed the normal rate of her father's clan if her mother was from a superior clan, as mentioned above, the mother's clan determined the social status of her husband and her children. This seems to be the strongest case of all the eight traces listed above by Hutton. Based on this, there is strong possibility that the Marâ society was once matrilineal.

*King's sister to open his vault*

The practice of the reservation of the right of the late king's sister or her son to perform the duty of opening the vault of the king's tomb for a new internment and receiving a fee for articles of value interred with the late king, so that these heirlooms were lost to the male and secured in the possession of the female line, has some connection with paying and receiving death dues, called "ru" or "rumâ" (literally, bone price). *Ru* was payable on the death of any married person. A man's *ru* was usually paid by his eldest son to the late man's maternal uncle, or if he had no son, by whosoever inherited from him. The youngest son paid his mother's *ru* to his mother's brother who is his own maternal uncle. The dead man's maternal uncles carried his coffin and the dead woman's brothers carried her coffin to the grave. As the corpse was lowered down into the grave, the maternal uncle (of the dead man) or the brother (of the dead woman) pushed the body into the vault and closed it with a stone slate (cf. Parry 1932:286, 401; Khaimiechhō 1995:111-112). When a mother died, her father's clan took care of her; when a father died, his mother's clan took care of him, which indicated that both duties were performed by the maternal side. The relationship should be noted here: the king in question was the one who would receive the sister's *ru*. Hutton's assertion (Parry 1932:xiii-xiv) that this is the most convincing survival of all the matrilineal system, has some possibilities that should be considered.

In addition to what Hutton lists above, there were other areas one could possibly argue for a trace of a recent matrilineal system.

*Respect shown and importance accorded to maternal uncles*

The respect shown and importance accorded to the maternal uncles may be deduced from the following sayings: *Chakhâ lâ alô pazaw thei lei, puhpa bie thy thei lei* (as you are unable to throw a stone far upward you are unable [not allowed] to disregard your maternal uncle's words); *Na puhpa mohnao kha, na chao a zaoh aw* (despise [dishonour/look down] your maternal uncle, you loose your buttock [you will get sick and die/you will be cursed]); *Puhpa o la a ngia hapa hmo cha a vaw kua hnabeiseih khao khah y* (do not expect goods/money that have entered into maternal uncle's house to return, a saying which implies that if your uncle asks you for a loan, never refuse, and when you have given him a loan, never go and ask him to return the loan); *Puhpa vo a bu* (literally, to cover oneself with maternal uncle's skin, to mean that this person could not be touched because his maternal uncle's clan would all come to avenge him); etc. In return, maternal uncles surrounded their nephews and nieces with love, concern and care.<sup>3</sup>

In many cases it was maternal uncles who brought up their nephews and nieces (sisters' children), the case of this researcher is a practical illustration. Women also did not take their husbands' clan names after marriage; they continued to maintain their own clans and remained strongly linked to their clans. Another interesting concept was the term *opi*. The principal and combined large dwelling (house) of the Marâ extended family (*chhôhkha*) was called *opi* (mother house – *o* [house], *pi* [a word used to refer to mature female animal as in *seihpi* [cow]). From all of these – how women were treated with respect and dignity, how maternal uncles were respected and feared, etc – Hutton's hypothesis of traces of recent matrilineal system is quite interesting and displays strong possibilities.

*Mother's leading role as expressed in proverbs*

The proverb, "*Nô rei a ngiah leipa cha a po a su*" (literally, one who disobeys one's mother hits a bush) warns a child that if he/she disobeys his/her mother's teaching and command, he will lose his/her way, that is, he/she will not succeed in life. There is no proverb which says, "*Paw rei a ngiah leipa cha a po a su*" (one who disobeys one's father hits a bush). Another proverb, "*Nô kyhpachana tlu ta a sôhpa y vei*" (there is no greater love than a mother's love) illustrates a

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<sup>3</sup> It was said that when the British came, they asked the Lushais whom they feared and respected most in their society and the answer was their kings (chiefs). They then asked them how they addressed him and the answer was "*lalpa*." The British told the Lushais to address him "*lalpa*." When the British arrived in Marâland they asked the same question. The Marâ people answered that they respected and feared their maternal uncle (mother's brother) most and that they addressed him "*pâpuh*" (the Marâ people addressed their king "*abeipa*" [majesty] and their queen "*abeinô*" [madam-majesty]). The Marâ people ended up in calling a British man "maternal uncle."

mother's life-giving love for her children. There is no proverb which says, "*Paw kyhpachana thu ta a sôhpa y vei*" (there is no greater love than a father's love).

#### *Feminine words above masculine ones in word pairs*

The importance, respect and affection females enjoyed in family and society may also be deduced from the order of word pairs (or "married words" in Marâ language concept) that described a kind of hierarchy. Normally, though not always as a rule, a higher one would come first in word pairs; for example, *alai-achyh* (big and small), *molai-mochyh* (big people and small people, an expression in terms of position), *abei-machhie* (royal and plebeian), etc. In the same way, in many cases, female or feminine words came first when paired with male or masculine words, for example, *nô-paw* (mother and father - parents), *chanô-chapaw* (female-male), *seihpi-seihtôh* (cow-bull) and so on.

#### *Female ancestor names*

The strongest argument for a past matrilineal system, which both Parry and Hutton have overlooked, is in tracing clan ancestors. For example, Fachhai clan<sup>4</sup> and Bohia-Thlyuthâ clan claim that their first male ancestor was a mythical "heaven" or "fruit" (Fachhai), or mythical "python" (Bohia-Thlyuthâ). But these clans have historical names for their first female ancestors who were said to have been conceived by the clans' mythical male ancestors. Pithlô was Bohia and Thlythâ (twin brothers) clans' ancestor mother, while Laihnei Zuanô (lady of Laihnei village) was the ancestor mother for the Fachhai clan (Khaimiechhôh 1995:40, 46). However, it is interesting to note that except for these first mother ancestors, all the descents afterwards were traced patrilineally. Therefore, even if the Marâ society practised a matrilineal system in the past, it could not have been a recent past phenomenon. It should also be concluded that, even if the Marâ society was matrilineal in the beginning, it developed in the interim into a patrilineal and

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<sup>4</sup> For example, one tradition says that the one who conceived the mother of the ancestor of the Fachhai clan (this researcher's clan) was "heaven." In another tradition, Laihneizuanô conceived the Fachhai ancestor Zawkhai through eating a *chheihluh* (*Phyllanthus Emblica*) fruit (cf. Khaimiechhôh 1995:46-47). How did the Fachhais get their clan name "Fachhai" instead of following after the name of their first ancestor Zawkhaih? This question is shrouded in obscurity. Professor HL Bosman narrated what one of his friends had said concerning tracing one's lineage: "It is better to stop where it still looks good, than tracing it to the very end" (from discussion December 2006). The Fachhais better do the same. However royal a clan they once may have been (they ruled a large number of village-states and territories), if one critically scrutinises this "heaven" or "*chheihluh*" conception theory, they may not wish to hear the outcome, for they could have been the descendants of an illegitimate child, as one cannot be conceived by "heaven" (but see Matt 1:20-21) or "*chheihluh*." As getting pregnant without a husband is a great shame, the family, in many cases, forever concealed the name of the father of the child. They would simply tell the child: "you are the son of 'heaven.'" That may well seem to be the case with the Fachhais' ancestor. Bohia and Mathipi clans too are said to have been descendants of a *python* and a *tiger*, respectively.

patriarchal society in some distant past, not in recent past as Hutton argues. The practice of primogeniture (see 2.2.3 below) was indicative of this.

*Female as physically weaker sex*

Although women were not considered inferior to men, they were treated as the physically weaker sex who should not be asked to do hard “masculine” work and duties. The saying, “*chapaw rãh sa, chanô o sa*” (literally, male, a jungle [wild] animal; female, a home [pet] animal) clearly defined gender roles in the Marâ society. Men went to frontier and women stayed home. Men went to farm, to war, to hunt, to fish, to gather house building materials, to travel, to sell exports and bring home imported goods, etc. Women stayed home to take care of children and to do household chores.

Although treating female as a physically weaker sex protected women from physical abuse and doing physically demanding works (or men’s work listed above), the ideology of female as the weaker sex inevitably created some stereotyping. Although wise, noble and aristocratic women and princesses freely participated in political and social discussions, and women were treated with respect and dignity, nevertheless, like many other women, Marâ women, did not escape some negative stereotyping. Khaimiechhô (1995:88-91) regards this as a strong manifestation of the Marâ patriarchal culture. Negative stereotyping of female gender could be inferred from sayings such as: *chanô sona khih hawka zoh vei* (the wisdom of a woman will not go beyond the village gate); *cha-ia luh lei, chanô lôh lei* (“headless crab, mindless woman”, meaning crabs do not have heads, neither do women have intelligence); *chanô dô nao* (easily deceivable woman – saying to excuse a woman who was impregnated by a man who would not marry her but who acted as if he really loved her to get the woman’s sexual consent); *nô tai* (female-defeated [male], a term used to shame boys who were defeated by girls in fights, games and sports); and “*Dawhkiah chhie ky vei, chanô chhie ky vei.*” This last saying compared less attractive women with a not-well-finished basket. Just as a not-well-finished basket has some use, a woman who was not necessarily attractive would find a husband. This saying has a positive connotation as well; suggesting that while a man may end up not being able to find a wife, a woman – however unattractive she may be – would have men who would want to marry her. This further implies that a woman could find a husband quite easily.<sup>5</sup>

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<sup>5</sup> The Marâs’ northern neighbours, the Lusheis (Mizos), are far more notorious in negative stereotyping of their women folk. Their proverbial sayings in this regard include: bad fence and bad wife can be changed (replaced); woman is like a seed which depends upon the earth in which it is sown; the wisdom of women do not reach the other side of the river; an undisciplined wife and unweeded grass in the boundary of the field are both unbearable, the fruits of *Taitaw* lying on the road and a marriageable lady can be picked up by anyone who comes along; women and crabs

On the other side of the coin, men were stereotyped as “*chapaw kyh na sawku kyh*” (like a small path way of porcupine in the thick bush, men can go anywhere); “*chapaw bie, ngiahrai hnie*” (the footprint of a bull/boar remains, likewise a man does not change his word); “*chapaw haina ky vei, ngiahraih râna ky vei*” (like a wild boar which can run anywhere, a man can explain away everything if he is cornered); “*a chapaw lei kaw*” (“he is no man”, to describe a coward); etc.

### *Concluding observations*

A few societies/tribes (see examples immediate below) in the north eastern States of India continue to practice matrilineal and matrilocal systems (Downs 1996:65-66). However, Downs (1996:66) concludes that “at least from the time systematic study of the tribal societies of North East India began to be made, it is clear that all of them are patriarchal, irrespective of whether they have matrilineal or patrilineal kinship systems.” For example, in the matrilineal societies of Khasi and Jaintia in the Meghalaya State, even though the position and function of a woman within the kinship system is highly valued, it does not necessarily translate into power and influence of women in the family and society. The matrilineal system in these societies does not necessarily command respect for a woman as a person, regard her as equal to a man, nor are women necessarily highly regarded or permitted freedom of actions as persons (Downs 1996:67 and works cited there).

Based on the above discussions, the Marâ society’s practice of matrilineal system in a distant past has strong possibilities. This may explain the female friendliness of the society. However, if the Marâ society had never been a matrilineal, but always been patriarchal, the society’s female friendliness would indicate that patriarchy was practised differently in different societies. Some were more female friendlier than others.

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have no religion; and many other sayings that compare women with crabs (cf. Ralte 1993:12-40; see also Downs 1996:70-76 and works cited there). Could the Marâ people’s negative stereotyping of females be influenced by their northern neighbours, the Lusheis who notoriously believed that women are lower than men? This would be an interesting topic for future research.

## Excursus Two

### PRIMOGENITURE IN THE MARÂ SOCIETY

#### Primogeniture in inheritance and succession

The Marâ descent was patrilineal and in all Marâ groups (*chi*), except the Sizô group (see below), the firstborn son was the prime heir. When his father died, the firstborn son inherited all the property and had to pay up all his father's debts. He also had to pay his father's death due.<sup>6</sup> (A mother's death due was paid by the youngest son. If a man left only one son, that son had to pay the death due of both his father and mother.) Sons other than firstborn and lastborn had no claim whatever to any share in the estate. In practice, the firstborn son often allowed the lastborn son a share (Parry (1995:285-288). Parry does not explain the reason behind giving a share to the lastborn, but not the middle sons. The most logical explanations seemed to be based on the practice that the mother's death due had to be paid by the lastborn son, the father's special emotional attachment to his lastborn son, the older siblings' affection for their baby brother, the lastborn as the last to reach the adulthood, and he was the one who normally stayed with and took care of the aged parents. In the event of a dispute arising because a firstborn son refused to give his youngest brother any share in the paternal estate, the king's court could insist on a compromise, giving the lastborn son a share, unless the firstborn son had very good reason for refusing. Women could not inherit, and if a man died without any sons, his brothers, nephews, or the nearest kinsman inherited his estate (Parry 1932:286-287).

If the deceased was one of two brothers, the estate went to the survivor. If the deceased was the firstborn of three brothers, the estate went to the youngest brother or his heirs. If the middle brother died childless, his estate went to the first brother or his heirs. If the youngest brother died childless, his estate went to the first brother or his heirs. In the case of four or more brothers, the firstborn and the lastborn inherited from each other if either died childless, and if a middle brother died childless, his estate went to one of the other middle brothers or his heirs (Parry 1932:286). The law, however, was not explicit as to which middle brother inherited what portion if the numbers of middle brothers amounted to three or five.

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<sup>6</sup> An essential requirement for inheriting a man's estate is that the heir has to pay the death due payable on the deceased and his wife, the payment of which may in no circumstances be dispensed with. According to old custom, if a king or a member of the royal house died and his heirs refused to pay his death due, one or two of the deceased's slaves could club together and pay the death due, and thereby ransom themselves from slavery (Parry 1995:287-288).

Since women could not inherit, if there were no brothers, the estate went to uncles and first cousins, and then to more distant relations, eventually going to the nearest fellow-clansman. A woman would only inherit if she was the last of the clan and no other clansmen at all were surviving. Such an eventuality, however, had probably never arisen. If a man died leaving an only daughter and this daughter was on bad terms with her paternal uncles, she could claim an atonement price called *hmiatlâ* (literally, face healing) from them, and if they refused to pay it they could not claim her marriage price, which in such circumstances would be taken by her maternal uncle (*puhpa*) or his heir or his representative. When a *puhpa* received his niece's marriage price in this way, he took the *okia* (principal bride-price) and its subsidiary prices, but could not claim his original entitlement of *pumâ* (maternal uncle's share of the girl's bride-price) as well. If the paternal uncles had paid the *hmiatlâ* (face healing), then they could receive the girl's bride-price. This was another manifestation of the protection of female dignity in the Marâ society – even orphaned girls were treated with respect and dignity. As a rule, anyone inheriting the property of a man who had died leaving daughters but no sons, handed over to the deceased's daughters, any article usually recognised as woman's property that the deceased might have left, such as belts or women's clothes or ornaments (Parry 1932:286-87).

If a man died leaving children who are minors, his wife was entitled to the custody of his estate on behalf of his firstborn son, and may continue to occupy her late husband's house and bring up his family, provided that she did not remarry. If a widow in these circumstances remarried, the property and children went to her late husband's brothers. If a widow was unable to look after the estate and support the family, the youngest brother of the deceased or, if the deceased himself was the youngest of several brothers, his eldest brother would have to support deceased's wife and children. If a man died without children, his father inherited his estate, or may allow one of the deceased's brothers to take it. The heir, whoever he was, had to pay the deceased's death due (Parry 1932:287).

If the deceased was a polygamist, his firstborn son of his principal wife inherited his estate, even if he was younger than his half-brothers. Brothers of the same mother (auxiliary wife) inherited from each other, as described above in the inheritance rule of a monogamous family. In the case of a man who died without having sons with his principal wife, his brothers and nephews inherited his estate before his sons by his auxiliary wives or illegitimate sons. Sons by auxiliary wives inherited before illegitimate sons, and the latter before a mere fellow clansman (Parry 1932:287-

288). This situation usually happened with royal or higher clans-men who had a principal wife and an auxiliary wife or wives.

### **Ultimogeniture in some groups of Marâ society**

Like in the neighbouring Lushai tribe, where the lastborn (*fathlum*) inherited his father's estate, in Chapi, Ngiaphai, Sabyh and other villages of Sizô area, the prime heir was the lastborn son. He took his father's house (*opi*) and divided all other property with his eldest brother, the largest share of the movables going to the lastborn son. Like in other areas, sons other than the lastborn and firstborn received no share in the inheritance, and if the firstborn son had died before his father, the lastborn son inherited the whole estate; but if any of the middle sons were still unmarried when their father died, the firstborn and the lastborn brothers had to subscribe and pay bride-prices for them. If a man left daughters and no sons, his brothers inherited, and gave the daughters of the deceased a share of his property for them to have as a dowry and to take with them when they married. A man's daughter inherited prior to cousins of more than three generations. If the only heirs were the daughter of the principal wife and the son of an auxiliary wife, the estate was divided between them. The son by an auxiliary wife had to pay all debts and the death dues of his father and of his father's widow, but could claim his half-sister's bride-price. As in other areas, the lastborn son paid the mother's death due and the firstborn son the father's. Owing to the death of either the firstborn or lastborn son before his father, the surviving brother inherited the whole estate and paid the death dues of both his father and mother (Parry 1932:288).

In the Sizô group, the *opi* (mother house) was regarded the most valuable inheritance. The floor of the house was raised some two metres above the ground so that *mithuns* could rest under it. Panels, poles, walls, and floors of the houses were made of huge and lasting woods.<sup>7</sup> King Vâsai's palace (house of this kind) of the Kihlô village-state was said to have contained fifty slave families inside the house (narrated by Laizô Fachhai, this researcher's father). Normally, older brothers went out of the *opi* as they established their own families and houses. The lastborn son who remained with his parents until their death at the *opi* naturally inherited the *opi* (Khaimiechhô 1995:51).

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<sup>7</sup> For example, a floor plank of this researcher's father's house (an inheritance handed down from at least two to three generations) was about a metre wide, 10 metres long and ten centimetres thick. Planks of this size were laid as the floor of the house (approximately 30x7 metres if it was the house of royals and nobles).

## **Inheritance law was fair and was final**

No Marâ man could make a will. All property had to descend to the customary heirs. At the same time, no one could refuse an inheritance on the basis of its being over-burdened with debt. An inheritance simply had to be accepted, which implied that debts were inherited as well as assets. The heir inherited everything, debts and obligations as well as assets. Thus in Marâ society it was practically impossible for a man to die and leave an orphaned family without provision, as his brothers and heirs were bound to support the orphans. This they were quite ready to do, as family bonds and feelings were strong. The orphans themselves soon earned their keep if boys, and, if girls, their protector was amply recompensed for any expense he incurred on their behalf when he received their bride-prices. In rare cases, if an old man so wished, he could divide up his property among his sons in his lifetime, and if he did so his sons had to abide by the division made by their father. Even then, he still had to recognise the rights and privileges of the lastborn (Sizô area) and firstborn (the rest of the land) by giving them larger or more valuable shares. However, it was *ana* (taboo) for any man who was not really old to undertake such a division of property in his lifetime, as it was believed to induce an early death (Parry 1932:288-289).

## **Adoption and inheritance**

Adoption was very rarely resorted to except in very exceptional cases since it was useless for any one to adopt a stranger as a son, as the claims of an adopted son to inherit could not be sustained against the claims of members of the deceased's family or clan. In addition, as family tie and clan awareness were very strong, if the child proposed to be adopted had any family relations, they would certainly object to his being adopted into another family and clan. Usually a childless man would take (or be given) a son of one of his brothers, and no objection would be raised to such an "adoption" within the family (Parry 289-290).<sup>8</sup>

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<sup>8</sup> In exceedingly rare cases in the past, adoption did take place outside the family circle. Even then, it was restricted to slaves or captives who did not have family or clan relations in the village-state. A lone man without children or other recognisable heirs adopted a slave or captive made in war as his son. To effect such an adoption the adopter performed the *khazohpina* (sacrifice to the god *Khazohpa*) and gave the person he wished to adopt part of the *phâhvaw* (parts of the animal sacrificed including flour, salt, and some blood of the animal sacrificed, which were dedicated to the god or spirit). The participation in this sacrifice made the person thus allowed to become a member of his adopter's family, and after this ceremony the adoption was completed. The adopted son was treated in every way as the son of the man adopting him, and on the death of his adoptive father inherited his property (Parry 1932:289-290).

## Substances of inheritances

Inheritances included heirlooms<sup>9</sup>, movable and immoveable properties (house, household items, farming and horticulture plots, animals, etc), slaves, and village-state with its territory in the case of a royal firstborn (crown prince).

There was no inheritance in terms of land for ordinary citizens, as the king was the sole owner of his village-state lands. One could inherit his father's *ohmo* (a piece of land on which their house stood) and *sadô* (a horticulture farm). Even so, one did not own this house-land and *sadô*-land. To some extent these lands could be sold, but the king reserved the right to approve or disapprove the sale. He could reclaim the lands and if he had a good reason for doing so, he would pay the holder for the improvements and works he had done. The royal ownership of the land was inalienable, as it was a dynastic land (inheritance). In rare instances, especially under "weak kings" (Khaimiechhō 1995:177), some nobles held fiefs within the village-state territory. Even so, none of them succeeded in establishing his own village-state in his fiefdom. To the delight of the kings, the fiefdom system was abolished by the British government (Parry 1932:250).

The citizens had no right to exploit any part of the village-state land for cultivation without the permission of the king. The Marâ people did not have permanent farms for growing rice (their staple food), maize or corn (common food), and other crops. Within the boundaries of the village-state lands, they moved from one range called *lyupih* to another *lyupih* every year. The distance of a *lyupih* from the village ranges from some five kilometres to even more than thirty kilometres depending on the location of the range. The process of this shifting farming system included: selection of a farming range (*lyuhpih*) for the whole village-state and surveying it (*lyumo*), distribution of farming plots (*lyuhmo rai*) (these three were usually done in October-November), clearing of the forests/felling trees/bamboos (*lyuva*) (November-January), burning of the felled trees/bamboos into ashes (*lyuru*)<sup>10</sup> in (March/April) after two to three months of letting it dry, sowing of seeds (*lyuhmitu*) (April-June), clearing of weeds (*lyuthlyu*) two to three times before

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<sup>9</sup> In the families of kings and nobles, heirlooms are handed down from generation to generation. These generally consist of necklaces of *pumtek* beads (different sizes, shapes and kinds of black and white beads having special names), jewellery (mostly silver and bronze), *rahos* (brass basins), gongs, and guns. Heirlooms, in fact, are never sold unless the owner is in very great distress indeed. In Chapi village-state it is believed that if a man sells his heirlooms he will have no children, and will be the last of his family (Parry 1932:290).

<sup>10</sup> In spite of the rapid degradation and deforestation, this practice is still being followed in many Marâ villages today both in India and Myanmar. Even from a commercial perspective, if trees and bamboos felled are sold instead of burning them down to ashes, its sale proceeds would have been much higher than the value of the crops harvested. But this option is not available due to lack of roads.

harvest (June-October), guarding the crops from pests (*lyurieha*) and harvest (*sâhhria* for rice - there are different terms of harvest for different crops) in November-December, and carrying (on their back and/or head) the harvests home (*sawpâhphao*) during and soon after the harvest. Normally all of these tasks were done by men except the last two – harvesting and carrying grains home – where both men and women participated.

The royal council distributed (*rai*) farming plots (*lyuhmo*) according to the size and strength of the families and their nobility. Unlike their counterpart Sailo kings of the Lushai Hills, a Marâ royal family reserved a large area as its own farm (cultivated by slaves), which was usually the most fertile plot. This was in addition to “royal and land taxes” called *sabai* (royal tax in terms of paddy), *sahaw* (royal tax [portion] in terms of game meat and slaughtered domestic meat), and *râhpaw* (land tax for cultivating the royal land or/and someone’s *lyubô*) they received. In some parts of Marâland, however, for example Sizô and Hlaipaoh areas, *lyuhmo* was called *lyubô* (literally, permanent holding farm). In addition to the kings selecting the most fertile plots as their *lyubôs*, nobles, aristocrats, and higher clansmen, too, had the right to hold their *lyubôs* (normally more fertile plots than others) permanently which were hereditarily handed down from generation to generation. A *machhie* (plebeian or commoner) could not keep a *lyubô*. If he cultivated a *lyubô*, he had to pay royalty, called *râhpaw*. According to Khaimiechhô (1995:178), the *râhpaw* was paid to the holder of the *lyubô*, but for Parry (1932:252-254) it was paid to the king. Both cases seemed to be in practice. If someone cultivated a farm which was not a *lyubô*, he paid *râhpaw* only to the king. If it was a *lyubô*, then he paid it to both the king and the holder of the *lyubô*.

This *lyubô* system seemed to suggest some kind of land holding (title holding). It would appear that within the land ownership of the king, some people were able to hold titles, or better called “sub- land ownership” of *lyubô* in several farming ranges. The holder of a *lyubô* could pass it to others on sale or through a gift exchange (Khaimiechhô 1995:178). This has some correlation with the ancient Israelite land holding system. Yahweh was the owner of the land. However, the Israelites could hold a piece of Yahweh’s land for their permanent settlement and cultivation. In the Marâ society, the king owned the land, but others may hold a piece of the king’s land as their permanent *lyubôs*. These similarities between the Israelite family land [h1 XII] and Marâ *lyubô* (a family’s farming plot) would be an interesting topic for future research.

## **Royal succession**

Succession to the throne was by primogeniture. Even in the Sizô area where the lastborn inherited the estate, succession to the throne was by primogeniture. A king usually had a queen (principal wife) and a few auxiliary wives. An auxiliary wife's son, called "*nothosaw*," could inherit the kingdom only if a king had no legitimate heir, that is, sons, brothers, or nephews. In such a case, a king would select a *nothosaw* he preferred to succeed him. Among the sons of the auxiliary wives primogeniture was not followed. Illegitimate sons, called *riasaw*, who were the result of the king's casual amour with a woman who was not taken even as an auxiliary wife could never succeed his father as king (Parry 1932:250). The younger sons of the principal wife (the queen) who did not succeed to their father's throne, would either found a new village-state or remained in their father's village-state as "*beitho*" (auxiliary royal). Sometimes it was the older princes who founded their own village-states during the life time of their father-king. In such a case, the lastborn son who remained with his father would succeed him. The new village-states were not required to pay any kind of tribute to the father-king. However, they were expected to help the father-king or his successor in times of difficulties like famine, war, etc. (Khaimiechhô 1995:50-51).

## **Reasons behind the practice of primogeniture/ultimogeniture**

Both Parry and Khaimiechhô do not provide any explicit reasons for the Marâ society's practice of primogeniture. The following are some possible reasons deduced from the above discussions and other Marâ beliefs, customs and practices:

### *To maintain pure royal blood for throne succession*

Sons of auxiliary wives and illegitimate sons were excluded from throne succession. The reason for this would appear to have been mainly for the throne to be occupied by pure royal bloods. The principal wife (queen) normally came from a royal clan (the princess of a ruling king or descendent of a king) and auxiliary wives came from patrician, plebeian, or even sometimes from slaves. As such, the sons of auxiliary wives were not pure royal blood. Once a dynasty was established, each dynasty worshipped its own henotheistic god, referred to as the god of such and such king and it was believed he had an exclusive relationship with the dynasty. In some respects, the Marâ people treated their kings as divine. As such the purity of one's royal blood was mandatory to become a king. That could be the reason, why a non-pure royal from amongst

plebeian and patrician clans was not accepted as a king. Parry (1932:250) noted that commoners who were made chiefs by the British government never commanded the same respect as a hereditary chief. The essentials of the relationship between the chief and the people was lacking with a commoner who was made a chief.

*To shoulder familial responsibilities*

For the Marâ society, primogeniture was not so much a privilege as it was a responsibility. In subsistent farming families of Marâland in those days, practically speaking there were not many valuable things to inherit. In fact, in some cases, it was more of a burden for an heir than a profit. However, the firstborn sons were willing to carry the burdens of their families. In the subsistent farming Marâ society, the firstborn son was practically a father to his younger siblings. When the brothers and sisters were all young, the firstborn was the big brother who protected, led, helped, corrected and rebuked his younger siblings. When he became a teenager, he together with his father, provided for and protected the family. If his father died prematurely, the firstborn would immediately assume all the family leadership responsibilities. He would provide for his mother and all his siblings. He would get wives for his younger brothers and marry off his sisters.

Even if they were not accorded the right of inheritance, the Marâ firstborns would gladly provide for and help their younger brothers and sisters. Because of this, younger ones would respect their oldest brother nearly as much as they would respect their father. Primogeniture was, therefore, a recognition and reward for all the hard work the firstborn rendered and the heavy responsibilities he shouldered for the family. Indeed, to be a firstborn son (and daughter) in the Marâ family was a heavy responsibility. In exceedingly rare cases, if the firstborn grew up to be an irresponsible son, succession (in case of kingship) and inheritance would go to the second born, and so on. In the Marâ family, the firstborn daughter too was like a mother to her younger brothers and sisters. She cared for all her younger brothers and sisters by helping her mother in all the household chores. For this reason, the mother's heirloom (mainly ornaments and clothes) normally went to the firstborn daughter.

*A sign of parents' fertility and a symbol of hope*

The term for human first fruit (firstborn) in the Marâ language was *thei hmiatua*. It was used for both the firstborn son and firstborn daughter. The firstborn son was called *sawchapaw thei hmiatua* (first fruit son) or *sahrôsi* ("chief son") and firstborn daughter *sawchanô thei hmiatua* (first fruit daughter). Both can be called *uthei* (eldest of the siblings) as well. It has a connotation

of parents' fertility and the firstborn's purity in terms of seed because he or she is born of the virgin womb (of his/her mother) and virgin (pure) seed (of his/her father). Childlessness was a great shame and misfortune. The reason was socio-religious rather than biological. It was normally associated with a curse(s), a curse for displeasing (dishonouring) one's maternal uncle, father, grandfather, or king. The anger of a god or goddess could also cause childlessness. With the birth of the first child, all these worries and burdens were lifted. However, if a son was not born to a man, he would be worried about who would inherit him and continue his name. So the birth of a son was normally welcomed with feasts and extravagant celebrations.

The modern Marâ continues to maintain the principle of primogeniture primarily in terms of responsibility. The former royal families are now equal citizens, although they still command a high degree of respect, especially from the older Marâ generation. With regard to inheritance, many parents today would divide their inheritance equally among all their sons. Daughters would also be given substantial shares. However, in terms of *opi* (mother house) and other prime estates, it would still go to the principal heir, in most cases the lastborn son (Sizô area) or the firstborn son (other areas).

Even if primogeniture is no longer practised as a binding rule, the shouldering of family responsibilities by the firstborn son, including educating his younger brothers and sisters if he is in a position to do so, and the care for his aged parents by the lastborn, remains a virtue. In fact, any son would be more than willing to stay with and take care of his aged parents. In some cases, sons would "compete" for this privilege of staying with and taking care of their aged parents. Because of this, there is not a single old aged home in Marâland. Nor is there any orphanage, as big brothers/sisters, uncles, or aunts are so willing to take the responsibility of bringing up their younger brother, sister, nephew, or niece who is an orphan. The church's women department runs a motherless babies' home to take care of infants whose mothers died. They do this on behalf of the infant's family. As soon as the child is weaned, he/she returns to his/her family. An irresponsible firstborn, either son or daughter, who does not want to help his/her younger brothers and sisters, is blamed or even shamed as the firstborn who does not know (who refused to know) that he/she is the firstborn. The lastborn son, in fact any son, who does not want to take care of his aged parents (normally because of his wife's influence) is "cursed" as the one who succumbs to his wife at the expense of his aged parents or the one who forgets his parents who brought him up with sweat and blood.

On a personal level, I am<sup>11</sup> the firstborn of my mother, but the third son of my bigamous father. I have five brothers and three sisters (three brothers and one sister from my father's first wife and two brothers and two sisters from my mother, my father's second wife). My family hails from that part of Marâland where a kind of ultimogeniture is practised, that is, the youngest son of the principal wife is the heir. He inherits all the paternal estate. In our case, the heir is the youngest son of my "big mother," i.e., the youngest son of the first and principal wife of my father. Fathers in Marâland normally would not change the primogeniture or ultimogeniture rule; nor would children challenge it.

My father was the first to have reached a middle school level (but not completed) education from our village. So he was one of the first school teachers among the Marâ people. He later left his teaching job and joined politics. He was not successful in politics. Nor was he to get his teaching position again. So he ended up a subsistent farmer. As my mother had to work hard in the farm, as soon as I was weaned my maternal grandmother took me to be brought up by my maternal uncles. Although I remained the legitimate son of my father, I remained with my maternal uncle (the younger of the two maternal uncles), a God-fearing school teacher, who supported me all through my education. I never went back to my father's house. Thus I could easily identify myself with what Hutton (see Excursus One above) describes about the honour and respect the Marâ people accorded to their maternal uncles.

Being the only one in the family who earned a means of living, as well as being a responsible firstborn and elder brother, I supported all my younger brothers and sisters, several nephews and nieces, a few cousins (including the children of my maternal uncles) and distant relatives for their high school and university education. I also regularly provide financial assistance to family members and relatives who are in need. For these reasons, coupled with my status as a Minister of the Gospel, my brothers, sisters, cousins, and other relatives in turn love me, respect me, and shower me with locally available gifts (mainly agricultural products) whenever I return home. Ours is a very closely knitted family. Thus I have insider's experience of reciprocity.

Ultimogeniture is the rule in my part of Marâland. So I do not expect to receive prime inheritance from my father. However, being a responsible firstborn of my mother, I am like a father to my younger siblings. The firstborn of my father (who is the firstborn of his first wife) too is like a

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<sup>11</sup> For the sake of clarity, the first person pronoun is used in this Excursus and the following one to refer to the researcher.

father to me and to all his younger brothers and sisters. Thus I also had insider's experience of the way parents regard and relate to their firstborns, that is, the significance, pride, hope, and expectation parents put on their firstborns. Thus I could easily identify primogeniture as not so much a right and privilege as it is to shouldering and fulfilling familial responsibilities and maintaining healthy familial relationships. I have been living outside of Marâland for most parts of my life, studying and working. For the last 15 years, I have been a missionary in three different countries in Africa. Thus I also had an insider's experience of patron-client relationship with some of my seminary students and the people I serve (me as patron and them clients).

## Excursus Three

### RESEARCHER'S IDEOLOGICAL LOCATION

#### Researcher's individual ideological location

My father and his two wives were converted from the Marâ Traditional Religion. Many years after their conversions, my father received God's call to be a church elder. But there was a very big obstacle – an elder should be a husband of but one wife. Even so, he strongly felt that the Lord wanted him to be an elder. A compromise was then made. He should treat one of his two wives as his sister. Interestingly, both the wives preferred to be his sister other than his wife. Finally, with the help of the church and to the relief of the first wife, the younger wife (my mother), was persuaded to remain as his wife. There was still another obstacle. He and his “new” wife had to have a church wedding. The pastor of the local church was none other than his own firstborn son (our eldest brother). Thus they were at last “married” by their own son. Father served his local church faithfully as an elder (as head elder for some years) under his son-pastor until he died in 1999.

My father was a great ethicist. He was more of a “Decaloguean” than a “Beattitudian.” For example, the sexual revolution that began in the sixties in the West was going to impact on the Marâ society as well. In response to this, my father warned us: “Because we are Christians, fornication, eloping, and adultery are sins, that is, sex before and outside marriage is sin. Besides, we are the Fachhai family (implying that we are from the royal clan and so we must live a life befitting our family name, that is, we must keep our dignity and honour); therefore if any of you are involved in such shameful act of fornication, eloping, and adultery, I will not dare to open my eyes anymore (that is, it would be a great shame for our family).” I grew up in such stable and healthy families (both the families of my father and maternal uncle) environments. Thus I can never over-exaggerate the importance and necessity of the family, a healthy family established and nurtured in the Christian principles where the husband and father of the family is faithful, loving, and responsible fulfilling his fatherhood responsibilities of spiritual leadership, as well as living as a life example for his children.

God was feared in our family and the Bible's authority over one's life accepted. This evangelical Christian faith was further nurtured by my evangelical seminary studies, as well as serving as a pastor of an evangelical church and a missionary with an international evangelical mission for most part of my life. Thus for me the Bible is more than a piece of literature; it is God's word which has authority over me. I also believe that the Yahweh God of the Old Testament who is the triune God of the New Testament is the only one true and living God as well as the only way to heaven. For this reason, I committed my life to be a missionary of this God. I am saddened and concerned about the decline of Christian moral and ethical standards in my own Christian Marâ community, my so-called Christian state of Mizoram, and other so-called Christian nations. I want to see godly societies where the fear of the Lord reigns.

On the other side of life, I am a member of a small people group whose nation/land has been unjustly divided by international boundaries and whose land is being neglected in terms of development by the governments of the respective nation-states. I am married to a Taiwanese whose country is practically functioning as a sovereign nation-state, but is ideologically claimed by China as a part of its territory. This results in Taiwan facing diplomatic isolation. China, which has become simply too strong for many nations, had made the severance of diplomatic relations with Taiwan as a precondition for a nation to establish diplomatic relations with China. The impact is felt even in my family whenever we want to travel – there are only a few countries where we can apply for a visa to visit Taiwan and where my Taiwanese wife can apply for visa for India and other countries. “Might is right” still rules in international politics. There is very little, if any, justice when it comes to international politics. Ultimately what matters is money and *cui bono*. I have lived and worked in both dictatorial and so-called democratic countries in Asia and Africa and have seen social, economic, political, and religious corruption and injustices in both of the systems. I have also seen the negative impacts of endless profit making economic capitalisation and globalisation on both environment and on the rural poor. Because of all these experiences, I believe in a holistic ministry – I am concerned not only about the spiritual salvation of individuals but also the plight of marginalised, oppressed and exploited, and unjustly treated individuals and societies. I want to see justice prevail and practised in this world.

Like my father, I am also an ethicist. However, as I pursue higher and scholarly studies of the Bible and theology, at times my evangelical view of the Bible with all it claims and affirms (see below under “relation to groups”) stand in binary oppositions to the hypotheses of the so-called historical-critical, literary, etc. scholarships. At times my evangelical faith and practice were

challenged, if not shaken. But at the same time, I do understand that I have to be willing to let the Bible undergo scrutiny if it is to be trusted. And I still believe that the Bible will pass all the scrutiny and the test of time. That said, it is true that some of the records in the Bible are historically implausible and ethically no more relevant for the modern world. These surely warrant explanations. I would call the task of explanation interpretation. A theological-ethical interpretation of the Bible will explain that, even if some of the records in the Bible are not historically plausible, that does not deprive the Bible of its spiritual truth or its ethical and moral authority. With regard to moral and ethical demands of the Old Testament, in order for it to be alive and relevant, it has to be theologically interpreted and applied in accordance with one's own context. I believe that one could be both a strong evangelical believer as well as scholarly well-grounded interpreter of the Bible.

### **Researcher's ideological group affiliations**

In addition to one's individual ideological location, one's interpretation is also inevitably influenced by the ideologies of groups to which one affiliates or relates. Robbins (1996b:100-105 and literature cited there) identifies seven different kinds of groups, namely clique,<sup>12</sup> gang,<sup>13</sup> action set,<sup>14</sup> faction,<sup>15</sup> corporate group,<sup>16</sup> historic tradition,<sup>17</sup> and multiple historical traditions throughout

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<sup>12</sup> A clique is a coalition (a temporary alliance of distinct parties for limited purpose) whose members associate and interact with one another regularly on the basis of affection and common interest and possess a marked sense of identity. A clique has core members who participate all the time, primary members who meet sometimes with the core and rarely alone, and secondary members who are on the fringe and participate infrequently (Robbins 1996b:100).

<sup>13</sup> A gang is a large clique with a single leader. It's a leader-centred coalition (Robbins 1996b:100).

<sup>14</sup> An action set is a group of persons who join to together as a coalition to coordinate their actions to achieve a particular goal. Leadership emerges as or after they join forces to achieve the goal; for example, a group of women who produced *The Women's Bible Commentary* in 1992 (Robbins 1996b:101, 102).

<sup>15</sup> A faction is a coalition of persons (followers) recruited personally according to structurally diverse principles by or on behalf of a person in conflict with another person or persons, with whom he or she was formerly united, over honour and/or control over resources. The central focus of the faction is the person who has recruited it, who may also be described as the leader. Rivalry is basic to the existence of a faction, for a faction supports a person engaged in competition for honour or resources. The conflict is political. The prizes for which these persons compete may also include access to the "truth" (a form of power) and hence ideological, as in religious group or church. Factions compete with other coalitions for the same prizes. They are conflicting units formed within a larger encapsulating social entity such as a village, an association, or even another coalition that had previously been united. The longer the faction remains united, the more corporate characteristics it acquires (Robbins 1996b:101).

<sup>16</sup> A body with a permanent existence, a corporate is a collection of people recruited on recognised principles, with common interests and rules (norms) fixing rights and duties of the members in relation to one another and to these interests. The common interests may be called property interests if property is broadly defined; for example, the Society of Biblical Literature in North America in 1880 which members authored *Harper's Bible Commentary* published in 1988 (Robbins 1996b:101, 102).

the world.<sup>18</sup> A corporate group would best represent this researcher's ideological group affiliation. A corporate group to which this researcher is affiliated is the SIM (Serving in Mission), formerly known as the Sudan Interior Mission). Founded in 1893, SIM is an international, interdenominational, and evangelical mission serving in more than fifty countries in all the continents of the world. Through SIM's 114 years of ministry, more than 20 million believers are worshipping the Lord in different countries of the world today. Every SIM member must agree with SIM's purpose,<sup>19</sup> core values,<sup>20</sup> and doctrinal statements. The following doctrinal statement of SIM represents the latest amendment (2006). Those who serve with SIM are committed to the essential truths of biblical Christianity. These include the following:

There is one God who exists eternally in three persons: Father, Son, and Holy Spirit. God is the almighty Creator, Saviour, and Judge who governs all things according to his sovereign will and is accomplishing his purposes in creation and in the Church to his glory. God the Father is the source

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<sup>17</sup> A historic tradition is one to which a person exhibits special alliance when interpreting the Bible and the world; for example, Catholic tradition, Protestant tradition, Reformed tradition within the Protestant tradition (Robbins 1996b:101).

<sup>18</sup> For the New Testament, this group refers to an approach that consciously relates New Testament interpretation not only to Judaism, out of which Christianity emerged, but to traditions like Hinduism, Buddhism, Islam, and Native American religion (Robbins 1996b:101-102). In addition to this, the ANE religious and socio-political traditions as well as other traditional religions may also be taken into consideration for the Old Testament interpretation.

<sup>19</sup> The purpose of SIM is to glorify God by planting, strengthening, and partnering with churches around the world as we evangelise the unreached, minister to human need, disciple believers into churches, and equip churches to fulfil Christ's Commission (see [www.sim.org](http://www.sim.org) © 2007 SIM International, under "Who We Are").

<sup>20</sup> SIM's core values include: *committed to biblical truth* (joyfully affirming the historic evangelical Christianity, with courage, we declare to the nations the good news of new life in Jesus Christ); *dependent on God* (having "By Prayer" as their motto, we depend on God for the provision of all their needs and committed to the demonstration of diligence, integrity, sharing, and accountability in cultivating and using the resources God provides); *people of prayer* (having prayer as foundational in their life and ministry, we praise God, seek his direction, request resources, and call upon the Holy Spirit to empower their ministries); *mission-focused* (committed to the urgent and unfinished task of making disciples of Jesus Christ in all nations, we desire to work in loving, trusting, interdependent relationships with churches and other partners who share their vision); *church-centred* (we are committed to being a Mission that begins, nurtures, and equips churches to be the expression of Christ in their communities and to reach out with cross-cultural missionary vision and action); *concerned about human needs* (acknowledging that the ultimate human need is to know God, we believe that God has called them to compassionate, holistic service in this broken world by alleviating suffering, fostering development, and effecting change in society); *a christlike community* (desiring to be a transforming community dedicated to becoming like Christ in love, servanthood, holiness, and obedience to the Father, we believe that following Christ's example means sacrifice, sometimes hardship, and perhaps even death); *a learning, growing community* (believing in the worth and giftedness of each person in SIM and of those they seek to serve, we practice the giving and receiving of discipleship, life-long learning, consultative leadership, mutual development, and training as enduring disciplines); *strengthened through diversity* (we intentionally choose to be international and interdenominational because they believe this expresses the unity of the body of Christ in the world; they also believe that they will be more effective in ministry as they incorporate the richness of cultural diversity in SIM and celebrate their oneness in Christ); and *responsive to their times* (we will respond with creativity and courage to evolving needs and opportunities under the guidance of the Holy Spirit, as they believe that to be effective and relevant, their ministries, priorities, and structures must be subject to ongoing evaluation and adaptation) (see [www.sim.org](http://www.sim.org) © 2007 SIM International, under "Who We Are").

of all that is good. He initiates creation and redemption which he accomplishes through his Son and the Holy Spirit. The Bible, consisting of the Old and New Testaments, is God's written word, revealing for all peoples his character and purposes. It is the final authority in all matters relating to belief and behaviour. The Holy Spirit moved the human authors of the Bible so that what they wrote is inspired, fully reliable, and without error in all it affirms.

Humanity is the climax of God's earthly creation, bearing his image, designed for relationship with him, and being the object of his redeeming love. All people have sinned. This results in guilt, death, and alienation from God as well as the defacing of every aspect of human nature. People are unable to save themselves from sin's penalty and power and from Satan's dominion. Jesus Christ, both fully God and fully man, entered history as saviour of the world. He was conceived of the Holy Spirit, born of a virgin, and lived an exemplary, sinless life in perfect submission to the Father and in loving relationships with others. He died on a cross, rose bodily, and ascended to heaven where he is advocate for his people and is exalted as Lord of all. Christ's sacrificial death, in which he bore the punishment due to sinners, is the only and all-sufficient basis of God's provision of salvation for all people of every culture and age, expressing his love and satisfying his justice. By God's grace the repentant sinner, through trusting alone in the Lord Jesus Christ as saviour, is put right with God, adopted by the Father into his family and receives eternal life.

The Holy Spirit makes the work of Christ effective to sinners, giving spiritual life and placing them into the Church. He indwells all believers, empowers them to love, serve, witness, and obey God, equips them with gifts, and transforms them to be increasingly like Christ. The universal Church is made up of all who have been born of the Spirit. It finds local expression in communities of believers called by God to worship, fellowship, proclaim the Gospel, and make disciples among all peoples, reflect God's character, engage in works of compassion, contend for truth and justice, and celebrate baptism and communion. The holy angels are personal spirit beings who glorify God, serve Him, and minister to His people. Satan is a spiritual being who was created by God but fell through sin. He, along with other evil spirits, is the enemy of God and humanity, has been defeated by the work of Christ, is subject to God's authority and faces eternal condemnation. The Lord Jesus Christ will visibly return to the earth in glory and accomplish the final triumph over evil. God will make everything new. The dead will be raised and judged. Unbelievers will suffer eternal punishment in separation from God; believers will enter into a life of eternal joy in fellowship with God, glorifying him forever (see [www.sim.org](http://www.sim.org) © 2007 SIM International, under "Who We Are").

## Excursus Four

### COMPARISON BETWEEN THE ANE HISTORICAL PERIODS AND THE HISTORICAL-ARCHAEOLOGICAL PERIODS IN PALESTINE

ANE civilisations from 3000 – 300 BCE	Palestine civilisation
<p><b>Third Millennium:</b>  <i>Mesopotamia:</i> Sumerian Period (2900-2400 BCE) – city-states (Kish, Uruk, Ur, Lagash, Nippur), Akkadian Period (2400-2100 BCE) – Sargon I (ca. 2371-2316), Naram-Sin (ca. 2291-2255), Ebla rivals Akkad; Sumerian Revival (2200-2113) – Ur III Dynasty, the Laws of Ur-Namma/Nammu, the Laws of Lipit-Ishtar.  <i>Egypt:</i> The first 8 of the 30 dynasties (three early dynasties – ca. 2920-2575 BCE, Old Egyptian Kingdom [4-8 dynasties – ca. 2575-2134 BCE], pharaohs, pyramids); First Intermediate Period or 9-11 dynasties (ca. 2134-2050 BCE).  <i>Syro-Palestine:</i> Ebla (ca. 2600-2350 BCE) (North West Semitic language), Indo-European Hittites (ca. 2000 BCE-).</p> <p><b>Second Millennium:</b>  <i>Mesopotamia:</i> Old Babylon: Amorite Period – Larsa, Babylon; Reign of Hammurabi who unified most of Mesopotamia and his monumental law collections (ca. 1792-1750 BCE); the Laws of Eshnunna: ca. 1770; non-Semitic Kassites (ca. 1550-1100 BCE); Nebuchadnezzar I – ca. 1100 BCE); Old Assyrian (ca. 2000-1500 BCE); Middle Assyrian (ca. 1500-1000 BCE; Tiglath-pileser I; Middle Assyrian Laws).  <i>Egypt:</i> Middle Kingdom or 11-14 dynasties (ca. 2040-1640); Second Intermediate Period or dynasties 15-17 (ca. 1640-1532 BCE); New Kingdom which includes Nubia/Cush or 18-20 dynasties (ca. 1550-1070 BCE).  <i>Syro-Palestine:</i> Hittite Kingdom (Old Kingdom – ca. 1700-1500 BCE); New Kingdom – ca. 1450-1190 BCE, New Hittite – ca. 1200 BCE - , treaties); Hurrian Mitani Kingdom (ca. 1500-1350 BCE); Mari, Nuzi, Alakah, Ugarit.</p> <p><b>First Millennium:</b>  <i>Mesopotamia:</i> New Assyrian Empire (880-627 BCE): initial rise (ca. 880-780: Ashurnasirpal II, Shalmaneser III, Adad-nerari III), zenith of the empire (745-725 BCE: Tiglath-Pileser III, Sargon II, Sennacherib, Esharhaddon, Ashurbanipal). New Babylonian/Chadean Empire (628-539 BCE: Nabopolassar, Nebuchadnezzar or Nebuchadrezzar II, Awil-Marduk, Nabonidus) (New Babylonian Laws).  <i>Persia &amp; Greece:</i> Persian Achaemenid Dynasties (539-331 BCE) (Cyrus, Darius, Xerxes, Artaxerxes); Hellenistic Periods ((331 BCE -) (Alexander the Great conquered Persians).  <i>Egypt:</i> Third Intermediate Period (1070-712 BCE, dynasties 21 – 25 [Libyan dynasties: 22-25]); Nubian pharaohs from the 25<sup>th</sup> dynasty, ca. 750 – 664 BCE); under New Babylon; under Persia; under Greece (Ptolemaic rulers).  <i>Syro-Palestine:</i> Nation-States: the Philistines and the kingdoms of Israel and Judah (ca. 1100 BCE- ) in the south, Aramaeans in the north, Phoenicians in the coastal areas (Carthage founded 841 BCE), and Moabites in the Transjordan.</p>	<p><b>Bronze Age (3500-1200 BCE):</b>            Early Bronze Age I A-B (3500-3000)            Early Bronze Age II (3000-2700)            Early Bronze Age III (2700-2200)            Middle Bronze Age I (2200-1750)            Middle Bronze Age II (1750-1550);            Late Bronze Age I (1550-1400);            Late Bronze Age II A (1400-1300);            Late Bronze Age II B (1300-1200).</p> <p><b>Iron Age (1200-586 BCE):</b>            Iron Age I A (1200-1150);            Iron Age I B (1150-1000);            Iron Age II A (1000-900);            Iron Age II B (900-700);            Iron Age II C (700-586).</p> <p><b>Babylonian &amp; Persian Periods (586-332 BCE).</b></p> <p><b>Hellenistic Period (332-37 BCE):</b>            Early Hellenistic Period (332-167);            Late Hellenistic Period (167-37).</p> <p><b>Roman &amp; Byzantine Periods (37 BCE- 638 CE):</b> Early Roman Period (37 BCE-132 CE [Herodian Period] [37 BCE-70 CE]); Late Roman Period (132-324 CE); Byzantine Period (324-638 CE).</p>

## Excursus Five

### MARRIAGE AND FAMILY IN THE ANCIENT NEAR EAST

#### Terminologies for the family, clan, kinship, and social strata

Several Akkadian terminologies, though not consistent, are used to describe the family, clan, and kinship: *bīt abim* (the family); *kimtu* (“family houses” which includes husband, wife, children as well as the wife’s brothers) (Van der Toorn 1996:18-20, 22, n. 65); *nišūtu* (a generic term for “people” used in much the same way as *kimtu*), *illatu* (clan, kin-group, group of confederates or associates); *nawûm* (a collective term for tribal pastoralists as well as their animals and even the area in which they pitch their camp); *hibrum* (a group of families who share a common migratory pattern which may be translated “clan” but generally tied to the name of the chief member of the group or perhaps an eponymous ancestor) (Matthews 1988:65-66); *ummatum* (a tribal/fighting unit, for example, ‘villages of the Yaminites’ [ARM 3/16:5-6]) (Matthews 2003a:3-4). The existence of these diverse terminologies could be a result of the conquest and migration of successive people groups in Mesopotamian history introduced above. The phrase, “flesh and blood” is an expression of kinship corporate identity (Van der Toorn 1996:20) which finds expressions in *lex talionis*<sup>21</sup> (Matthews 2003a:5).

With regard to social stratification, both Egypt and Mesopotamia follow largely the same pattern, with the royal family on the top followed by royal officials, priests, warriors, commoners, and slaves (Snell 1997:108-109). In Mesopotamia, *awîlum* class people are those with full citizenship rights who are not legally attached or dependent upon temple or palace (Matthews 2003a:6). For this reason, higher fines and punishment are meted when they are offended (Snell 1997:60). Commoners are called *muškēnū*. This group is much larger than the *awîlum*. They are tied to either the royal authority or the temple complex (Greengus 1995:476-477). They work or perform military service for their patron and give back a portion of the harvest in rent or tithe for their plot (Snell 1997:54). At the bottom of the social strata are slaves, who were prisoners of war or debt

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<sup>21</sup> For example, if a house collapses because of the contractor’s fault (using shoddy materials or poor workmanship), the builder is to be executed (LH §229); if the owner’s son was killed in the collapse, then the builder’s son has to be executed (LH §230); if a slave was killed, then the builder must supply a slave of equal value as a compensation of the loss of property (slave) (LH §231) (Matthews 2003a:5).

slaves (LH §117). They served the king, the temple, or private families (Boecker 1980:77).<sup>22</sup> A man would not normally marry someone from a lower social status, especially for the first or principal wife (Matthews 2003a:7).

## Marriage and family

In Mesopotamia, the process of marriage and establishment of a family begins with betrothal, marriage settlement, payment of bride-price, consummation of marriage at the bride's chamber at her father's house, and the bride becoming the legal wife and thus leaving her father's house for her husband's house, bringing her *šerikum* (dowries) with her<sup>23</sup> (LH §§171-179) (see Matthews 2003a:6-16 and literature cited there). In addition to bride-price and dowry, there is another kind of marriage gift, given to the new wife by the groom's side. Although the honour of the household is bound in its guarantee that the bride is a virgin at the time of marriage in most traditional societies, Mesopotamian documents, at least prior to the New Babylonian era, "categorically indicate the young woman was a virgin prior to the arrangement of her betrothal in marriage" (Matthews 2003a:9).

Most marriages seem to have been monogamous. However there are a number of law collections and narratives that mention polygamy, including marriage with a priestess (Westbrook 1969:103-108). In the cuneiform texts, the reason for taking a second wife seems to be primarily because of infertility (on the part of a priestess-wife she was not allowed to have children) or illness on the part of the first wife (LH §§144, 148, 149) (Matthews 2003a:15). In a rare case, a disaffected wife wants to leave her husband's house and so maliciously "appropriates goods, squanders her household possessions, or disparages her husband" (LH §141) (Roth 1997 [1995]:108). If she is

<sup>22</sup> Slaves have no rights over their persons. However, the law protected them from unjustifiable abuse (see LH 199, 213, 219) (Matthews 2003a:6).

<sup>23</sup> Betrothal was initiated from the groom's side (father or eldest brother) who *sālum* (asked) the prospective bride's father/guardian for consent to the betrothal (LE §27) and settled a *kirrum* (an earthenware vessel used to contain beer), which is a token of contract with her father and mother, which also served as a public announcement of the betrothal where ceremonial libation was shared between the families. Once a betrothal agreement had been made, the young woman became a *kallatum* ("daughter-in-law") (LH §156). This was followed by the payment of bride-price (*terhatum*), which acceptance was symbolised by the drinking of beer by both parties (Greengus 1969:62), after which sexual rights were restricted to the groom only although this does not necessarily imply immediate physical transport from her father's house or sexual intercourse (Matthews 2003a:10; see also Westbrook 1988b:11-16). This was called *ahāzum* ("to take in marriage" [Westbrook 1988b:10-11, nn. 8-10]). Once *terhatum* is received, it was said that the bride side had agreed to *riksātim* ("a contract concerning their daughter" [Westbrook 1988b:31]) Interestingly, this custom of marriage settlement with an earthen vessel and drinking beer together are very similar to that of the Marā custom whose groom's side settled an earthen beer container or later an aluminium or bronze vessel for betrothal and drank beer together as an agreement. The final step in the completion of marriage was physical consummation after which the bride became *aššatu* (wife) (Matthews 2003a:12).

convicted of these acts, the husband, instead of divorcing her, “as a means of shaming her before the entire community, he might marry a second wife and relegate the first wife to the position of a household slave” (Matthews 2003a:15-16; see also Westbrook 1988b:108).

The primary purpose of marriage was to establish a family. This includes producing children, sons in particular, for the father, who would inherit the paternal estate, provide additional family workforce, care for parents as they aged, and continue to make the offerings necessary to the ancestor cult. Because of high infant and child mortality rate,<sup>24</sup> it was necessary for couples to produce as many children as they could;<sup>25</sup> thus infertility and impotence were regarded catastrophe<sup>26</sup> (Matthews 2003a:16-17, 22). Parents were to protect and bring up their children and children were in turn expected to honour their parents absolutely. An ancient text (KAR, 300) tied honouring one’s father (including previous generations of the fathers – ancestors) with an ability to become a father: “[If a man] does not honour his father: [his virility] will soon be taken [away]. [If] in [a man’s] fireplace fire reignites regularly: the blessing of the god is constant to him in his house” (Van der Toorn 1996:129-130).

Marriage united the two families as well as clans. Therefore, divorce was not easily sought, as it would have social and economic implications, especially if the couple had already produced children.<sup>27</sup> But divorce did occur. When a husband wished to divorce wife, he said, “You are not my wife” (LH §141), a reversal of saying, “You are my wife” at marriage (Matthews 2003a:25). Grounds for divorce included: infertility (LH §§138-140, 148), disaffectedness, adultery, and other reasons the husband may have. Chief among the causes of divorce was adultery mainly on the part of the wife, which violated her husband’s exclusive sexual rights over her. Adultery also violated a

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<sup>24</sup> A Harran census reports a very small family size of 1.43 (children?) per household (Snell 1997:81), but this may simply be a reflection of how few children reached an age of accountability (Matthews 2003a:16, n. 88).

<sup>25</sup> But if there were too many daughters; it was an economic burden for parents since each would expect to receive equal treatment with regard to betrothal expenses as well as a dowry (Matthews 2003a:17). This may explain references to exposing infants, literally “casting [them] to the dog’s mouth” (Malul 1990:104-106) and abortion, although there were many other reasons for abortion (see Matthews 2003a:21-22 and literature cited there for discussion on abortion).

<sup>26</sup> Relating to this, magic texts prescribe some remedies for infertility and impotence: “Total: 21 stones to help a barren woman become pregnant; you string them on a linen thread and put them around her neck” (Biggs 1995:1917). A Hittite text provides a male impotence “to achieve arousal through the use of incantations, the ingestion of ritual meals and sleeping before a table filled with offerings to a goddess” (Matthews 2003a:17-18 who cites Harry A Hoffner). When no remedy works, adoption (see below) was usually a last resort for a childless couple.

<sup>27</sup> LH §137 imposes greater penalty on a husband who wishes to divorce his *nāditum* wife with children through a surrogate; LE §59 expels the husband to leave his children with his now divorced wife’s custody; and YOS 14.344 expands this law to include adopted children, presumably for the protection of the economic rights of the wife and children ((Matthews 2003a:25-26).

taboo of society and so angered the gods. For this reason, “a woman who was accused of adultery either by her husband or another person, even if she has not been caught in the act, has no option but to submit to a trial by ordeal in order to reestablish her husband’s honor” (Matthews 2003a:28) (cf. LH §131-132). Adultery was taken so seriously that each of the law collections of the ANE contains clauses concerning adultery.<sup>28</sup> The adulterous party was normally taken to be the wife, although the LH §129 and MAL A.14 include an escape clause and mention the husband as adulterer and thus prescribe his punishment. There have been scholarly discussions concerning whether a wife had a right to divorce her husband in Mesopotamia.<sup>29</sup> At least there is one law that seems to give the wife a right to divorce her husband (LH §136). Even if the wife has the right to divorce her husband, it would be more difficult for the wife to divorce her husband than *vice versa* (for legal procedures of divorce and punishments, see Matthews 2003a:24-27).

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<sup>28</sup> “If the wife of a young man, on her own initiatives, approaches a man and initiates sexual relations with him, they shall kill that woman; that male shall be released” (LU §7); “If he concludes the contract and the nuptial feast for her father and mother and he marries here, she is indeed a wife; the day she is seized in the lap of another man, she shall die, she will not live” (LE §28); “If a man’s wife should be seized lying with another male, they shall bind them and throw them into the water; if the wife’s master allows his wife to live, then the king shall allow his subject to live” (LH §129); “If the wife of a man should go out of her own house, and go to another man where he resides, and should he fornicate with her knowing that she is the wife of a man, they shall kill the man and the wife” (MAL A.13).

<sup>29</sup> For argument against, see Driver and Miles (1955:291-292 who argue that such a right would be against the culture of a patriarchal society; for argument for, see Westbrook (1988b:208-211).

## Excursus Six

### SYNOPSIS OF THE COVENANT CODE, DEUTERNOMIC CODE, AND HOLINESS CODE (Driver 1902: iv-vii)

Covenant Code (Exodus)	Deuteronomic Code (Deuteronomy)	Holiness Code (including P)
20:2-7	5:6-18 (21) The Decalogue	
20:24	12:1-28 (place of sacrifice)	Lev 17:1-9
cf. 23:24; 34:12, 15f.	12:20-31 (not to imitate Canaanite rites)	Num 33:52
cf. 22:19 (20)	ch.13 (cases of seduction to idolatry)	
	14:1-2 (disfigurement in mourning)	Lev 19:28
	14:3-20 (clean and unclean animals)	Lev 11:2-23; 20:25
22:30 (31)	14:21a (food improperly killed)	Lev 17:15; 11:40
23:19b; 34:26b	14:21b (kid in mother's milk)	
	14:22-29 (tithes)	Lev 27:30-33; Num 18:21-32
23:10f.	15:1-11 (year of Release)	Lev 25:1-7
21:2-11	15:12-18 (Hebrew slaves)	Lev 25:39-46
22:29(30); 13:12; 34:19	15:19-23 (firstlings of ox and sheep: cf. 12:6,17, 18; 14:23)	Num 18:17f. (cf. Ex 13:1f.; Lev 27:26; Num 3:13; 8:17)
23:14-17; 34:18, 20, 22-24	16:1-17 (the three annual Pilgrimages)	Lev 23; Num 28:-29
	16:18 (appointment of judges)	
23:1-3, 6-8	16:19-20 (just judges)	Lev 19:15
	16:21-22 (Ashérah's and "pillars" prohibited)	Lev 26:1
	17:1 (sacrifices to be without blemish: cf. 15:21)	Lev 22:17-24
22:19(20); 20:3; 23:13; 34:14	17:2-7 (worship of "other gods" or of the host of heaven)	
	17:8-13 (supreme tribunal)	
	17:14-20 (law of the king)	
	18:1-8 (rights and revenues of the tribe of Levi)	Lev 7:32-34; Num 18:1-7, 8-20
	18:9-22 (law of the prophet)	
	18:10a (Molech-worship: cf. 12:31)	Lev 18:21; 20:2-5
22:17(18) (sorceress alone)	18:10b-11 (different kind of divination and magic)	Lev 19:26b, 31; 20:6, 27
21:12-14	19:1-13 (asylum for manslayer: murder)	Num 35:9-31; Lev 24:17, 21
	19:14 (the landmark)	
23:1	19:15-21 (law of witness)	Lev 19:16b
	c.20 (military service and war: cf. 24:5)	
	21:1-9 (expiation of an untraced murder)	
	21:10-14 (treatment of female captives)	
	21:15-17 (primogeniture)	
cf. 21:15, 17	21:18-21 (undutiful son)	cf. Lev 20:9
	21:22-23 (body of malefactor)	
23:4-5	22:1-4 (animals straying or fallen: lost property)	
	22:5 (sexes not to interchange garments)	
	22:6-7 (bird's nest)	
	22:8 (battlement)	
	22:9-11 (against non-natural mixtures)	Lev 19:19
	22:12 (law of "tassels")	Num 15:37-41
	22:13-21 (slander against a newly-married maiden)	
20:14	22:22-27 (adultery)	Lev 18:20; 20:10
22:15 (16)	22:28f. (seduction)	
	23:1(22:30) (incest with stepmother)	Lev 18:8; 20:11

	23:2-9(1-8) (conditions of admittance into the theocratic community)	
	23:10-15 (9-14) (cleanliness in the camp)	Num 5:1-4
	23:16(15)f. (humanity to escaped slave)	
	23:18 (17)f. against religious prostitution)	
22:24 (25)	23:20 (19)f. (usury)	Lev 25:35-37
	23:22-24 (21-23) (vows)	Num 30:2
	23:25 (24)f. (regard for neighbour's crops)	
22:25 (26)f.	24:1-4 (divorce)	
21:16	24:6, 10-13 (pledges)	
	24:7 (man-stealing)	
	24:8f. (leprosy)	Lev 13-14
	24:14f. (wages of hired servant not to be detained)	Lev 19:13
	24:16 (the family of a criminal not to suffer with him)	
22:20-23 (21-24); 23:9	24:17f. justice towards stranger, widow, and orphan)	Lev 19:33f.
	24:19-22 (gleanings)	Lev 19:9f.; 23:22
	25:1-3 (moderation in infliction of the bastinado)	
	25:4 (threshing ox not to be muzzled)	
	25:5-10 (levirate-marriage)	
	25:11-12 (modesty in women)	
	25:13-16 (just weights)	Lev 19:35f.
17:14	25:17-19 (Amalek!)	
cf. 22:28a (29a); 23:19a; 34:26a	26:1-11 (thanksgiving at the offering of firstfruits)	Cf. Num 18:12f.
	26:12-15 (thanksgiving at the payment of the triennial tithe)	
23:20-33	c.28 (peroration, presenting motives for the observance of the Code)	Lev 26:3-45
20:4, 23; 34:17	4:16-18, 23; 7:25 (against images)	Lev 19:4b; 26:1
23:12b	5:14b (philanthropic object of Sabbath)	
Cf.13:9, 16	6:8; 11:18 (law of frontlets)	
20:3; 23:13; 34:14	6:14; 11:16 (against "other gods")	Lev 19:4a
13:14	6:20f. (instruction of children)	
23:24a, 32f; 34:12, 15f.	7:2-4; 16 (no compact with Canaanites)	Num 33:55
23:24b; 34:13	7:5; 12:3 (Canaanite altars, "pillars" & c. to be destroyed)	Num 33:52
19:6; 22:29 (30)	7:6; 14:2,21; 26:19; 28:9 (Israel a "holy people") (in different connexions)	Lev 11:44f.; 19:2; 20:7,26; Num 15:40
22:20 (21); 23:19	10:19 (to love the "stranger")	Lev 19:34
	12:16, 23; 15:23 (blood not to be eaten)	Lev 17:10-14; 19:26a (cf. 3:17; 7:26f. Gen 9:4)
23:18a; 34:25a	16:3a (leavened bread not to be eaten with Passover)	Ex 12:8
13:6f.; 23:15; 34:18	16:3b, 4a, 8 (unleavened cakes for seven days afterwards)	Ex 12:15, 18-20; Lev 23:6
23:18b; 34:25b	16:4b (flesh of Passover not to remain until morning)	Ex 12:10; Num 9:12
	16:13, 15 (feast of "boots"; "seven days")	Lev 23:34, 39, 41-43
	17:6; 19:15 ("two or three witnesses")	Num 35:30
21:23-25	19:21 (lex talionis)(but in different application in each case)	Lev 24:19f.
20:25	27:5-6 (altars of unhewn stones)	

## Excursus Seven

### MARRIAGE AND DIVORCE IN ANCIENT ISRAEL

There were some differences in marriage and divorce customs and practices based on pre-monarchic, monarchic, exilic, and post-exilic periods. For example, marriage as a contract was not attested in the pre-exilic period, while it was the case with Elephantine Jews. Nevertheless, fundamental elements largely remained the same in all these periods. Therefore, in the following, we will synchronise all these periods as we analyse marriage and divorce in ancient Israel. Like in Mesopotamia, the process of marriage in Israel began with betrothal negotiation *vʿa* (Piel: to betroth; Pual: to be betrothed) (Exod 22:15; Deut 20:7; 22:23, 25, 27, 28; 2 Sam 3:14),<sup>30</sup> which was normally initiated by the groom's father (Gen 24:1-5; 34:6-12). Betrothal then became official by the payment of *ḥm* (bride-price)<sup>31</sup> to the person with authority over her (Gen 34:12; Exod 22:16-17; 1 Sam 18:25).

There are evidences in the Second Temple Judaism<sup>32</sup> (Collins 1997:108) of the existence of a marriage contract, which includes the specifications of the contents of bride's dowry, the provision of dissolution of marriage, and the names of witnesses. After the wedding ceremony, the groom and bride became husband [*vʿa*/I [b] and wife [*hva*]. Being married and having children were the two chief aims of life for ancient people. Thus weddings provided occasion for great celebrations with sophisticated programs and procedures (cf. Ezek 16:8-13) (Block 2003:44-46).<sup>33</sup> There was

<sup>30</sup> Qal participle of *xql* (to be married) (e.g., Gen 19:14) is also used for betrothal; also *ʿrx* (Niphal: to be assigned to), occurs only once (Lev 19:20).

<sup>31</sup> The payment of bride-price normally would be in kind. However, it seems that one could also substitute the payment of bride-price with service (Gen 29:20, 27-28; Exod 2:21 [?]) or the performance of a daring deed of valour (Jos 15:16-17 cf. Jdg 1:12; 1 Sam 17:25; 18:20-27 cf. 2 Sam 3:14). Once the bride-price was paid at the betrothal, marriage became legally in force, that is, a betrothed woman's sexual rights were restricted to the groom only (Exod 22:15; Deut 20:7; 22:23, 25, 27, 28), although marriage was not yet consummated until the wedding night. This must have been the reason for to whom Lot's daughters were betrothed are described as Lot's sons-in-law in Genesis 19:14; Samson's betrothed is also referred to as his wife (Jdg 14:15; 15:1). The New Testament also regards betrothal and marriage as equivalent (Matt 1:18, 20, 24-25) (Wakely 1997: and literature cited there).

<sup>32</sup> The necessity of marriage contract is also attested in the ANE texts (LH §128; LE §§27-28). It is, however, disputable whether marriage contracts were in practice in the pre-exilic Israel and Judah. Marriage as a contract provides the termination of it by either party, without necessarily entailing moral culpability (Collins 1997:109-115).

<sup>33</sup> Ancient Israel's wedding ceremonies include: (1) The groom covered his bride with his garment (Ezek 16:8; cf. Ruth 3:9; Deut 23:1; 27:20; Mal 2:16), a symbolic act signifying "the establishment of the new relationship and the symbolic declaration of the husband to provide for the sustenance of the future wife" (Kruger 1984:86). (2) The groom swore an oath (*nišba'*) of fidelity to the bride. Presumably this would involve a physical gesture of raising the hand (*nāšā' yād*) to heaven, thereby invoking God as witness and guarantor of the covenant (Exod 6:8; Num 14:30;

no such private marriage. Marriage was a matter of concern for the entire families of the groom and bride, taking economic aspects into consideration (Blenkinsopp 1997:59-62).

Monogamy was the normal and common form of marriage (Gen 2:21-24), but tradition and custom permitted polygamy as well (Gen 4:19, *passim*),<sup>34</sup> although those who practised polygamy would be mostly those with considerable wealth – a harem was thus a sign of a considerable personal fortune (Phillips 1973:141-142). However, later wisdom texts seem to be in the opinion that monogamy was the preferred form of marriage (Hagedorn 2004:204). Although endogamy was a common practice, which included half-brother-sister and cross-cousin marriages (Gen 20:12; 24:15; 28:9; 29:12; Num 26:59; 27:1–11; 36:1–13) (but see Leviticus 18:6-24 which prohibits marriage with half-sister), exogamy was also accepted especially in foreign lands and for royal families (Gen 26:34; 28:6–9; 41:45; 38:2; Exod 2:21, Num 12:1; Jdg 14; 16:4–22; Ruth 4:13; 2 Sam 3:3; 1 Ki 16:31; 1 Ki 3:1; 11:1; 14:21)<sup>35</sup> (Hamilton 1992:561; see also Blenkinsopp 1997:59).

The social and economic background of the would-be wife would be taken into consideration when the first wife was chosen. But from the second wife onwards, it seemed that one could marry anyone he liked regardless of her social and racial background; thus Deuteronomy 21:10-14 is a text where a man is reported to have married his own captive/slave woman.<sup>36</sup> However, for a

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Neh 9:15; Ezek 20:5, 6, 28, 42; 47:14; cf. Deut 32:40; Ezek 16:5, 22, 23). (3) The groom entered into covenant (*bô' bērit 'et*) with his bride so that she became his. This part of the ceremony would involve a verbal formulaic declaration something like “I, PN, will be your husband, and you, PN, shall be my wife” (a marriage contract from the Aramaic-speaking Jewish colony at Elephantine in Egypt reads: “She is my wife, and I am her husband from this day and forever”). (4) The groom bathed his bride and anointed her with oil as a tender expression of love and devotion (the gesture finds an analogue in the Old Babylonian reference to “a day of bathing” as part of the marriage ritual). (5) Depending upon the economic resources of the groom, he would dress her up in the finest garments and jewellery he could afford (Ezek 16:10-13; cf. Ps 45:14-15; Isa 61:10). (6) He prepared his finest meal for her, and they would feast together in his house. Based on several written marriage contracts recovered from the fifth-century BCE Jewish colony at Elephantine and ANE law collections (LH §128, *ANET* 171), it seems likely that at some point in the ceremony written copies of the marriage covenant were prepared and deposited for safe keeping in a secure place. The Song of Songs is probably songs there were sung during such joyous wedding celebrations. The groom would wear his diadem (SS 3:11 and Isaiah 61:10) and the bride her veil (SS 4:1, 3; 6:7) and the couple would be accompanied by their friends with musical instruments as they proceeded to the groom’s house (1 Maccabees 9:39; Ps 45:15; Jer 16:9). The celebration reached their climax in a great feast, which could last an entire week (Gen 29:27; Jdg 14:12) (taken almost verbatim from Block 2003:44-46).

<sup>34</sup> However, Craigie’s (1976:282) construct that one of the reasons why polygamy is permitted in this law could be that during and after the war (cf. 20:1-20; 21:10-14), there would be a shortage of men through death in battle, and thus polygamy was one way of dealing with what could become an acute social problem (see also De Vaux 1961:24-26) is not convincing, as the practice of polygamy was very ancient (Gen 4:19).

<sup>35</sup> There were some Israelite women who married foreigners (2 Sam 11:3; 1 Kgs 7:13, 14; Est 2:5-7, 17; 1 Chr 2:34–35).

<sup>36</sup> Marriage with Canaanite women, who in any event ought to have been put to the ban (20:16), was utterly forbidden (7:3), but marriage with other foreign captives, who are listed among war booty (Deut 20:10-15) seemed to have been

woman, the socio-economic background of the would-be husband is always taken into consideration, be it a monogamous or polygamous marriage (Blenkinsopp 1997:59-62). Naturally this later and presumably younger wife could easily become her husband's favourite and, as in the case of Bathsheba (1 Ki 1:17), try to influence him in the disposition of his property (Phillips 1973:140). Hence it is no surprise then that the clause of a marriage with a young captive woman (Deut 21:10-14) is immediately followed by the rule of primogeniture (Deut 21:15-17).

In addition to the procreation of children, another purpose of marriage is to protect the sanctity of sex and human sexual relationships (Collins 1997:128-130, 147). The scriptures expressly forbid sexual relations outside of marriage<sup>37</sup> (Demarest 1990:211). Thus fornication,<sup>38</sup> adultery, incest, homosexuality, and bestiality are prohibited. According to Leviticus 18 (cf. 20), incest<sup>39</sup> is a great shame (vv 6-16). Verse 17 decries having sexual relations with both a woman and her daughter (and her grand-daughter) as a shame and wickedness. Verse 18 implies how an irresponsible sexual behaviour on the part of the father could make his wife, or for that matter, his entire family, living with shame throughout her/their life. Adultery, homosexuality, and bestiality are thus condemned in strongest terms. Adultery (sexual intercourse with neighbour's wife) is called defilement (v.20). Assuming that God's design for marriage and sexual intercourse is between man and woman, homosexual practice<sup>40</sup> (v.22) and bestiality (v.23) are regarded as moral

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permitted (Phillips 1973:140; Thompson 1974:228). Later the dangers of such marriages were also recognised and thus any foreign marriage was prohibited (Ezr 9-10; Neh 10:30; 13:23) (Phillips 1973:140). This legislation could have two basic results: the men would be restrained from rape, and the women would have time to become adjusted to their new condition. After marriage, if her husband was not pleased with her, he had to let her go free because he had intercourse with her (v. 14) (Kalland 1992:132).

<sup>37</sup> Of course the Scriptures also reported about sex before and outside of marriage, including sexual intercourse with prostitutes. However, it should be noted that the Scriptures never affirm these practices as normative.

<sup>38</sup> The bride's virginity was highly valued and super imposed. If the bride was discovered not to be a virgin she could be divorced. Thus Deuteronomy 22:13-21 instructs the bride's parents to keep the sheet stained with the virginal bleeding produced by the first coitus to be produced in a legal hearing should the husband ever suspect her of not having been a virgin at the time of the wedding (Block 2003:46). A conspicuous lacuna is the omission of the emphasis on the groom's virginity. In this researcher's opinion, this is understandable owing to the practice of polygamy as well as the husband's exclusive claim of his wife's sexual rights. Elsewhere fornication on the part of unmarried men is also prohibited.

<sup>39</sup> A daughter (the closest blood) is surprisingly missing from the list of close relatives with whom a man is prohibited to have sexual union. This is probably because the writer (probably an exilic one) took it as a thing which goes without saying. It was already accepted that such a union was illicit (Gen 19:30ff.). It is clearly forbidden in the laws of Hammurabi (LH §154) and the Hittite laws (HL §195) (Wenham 1979:254).

<sup>40</sup> The homosexual issue is a minefield and a bone of contention today. Opinions are divided. Recent years have witnessed the appearance of numerous pieces of literature on the subject. Some, for example, Perry (2007:65-83), convincingly argues for it including homosexual marriage. Others argue that homosexual practice is termed negatively both in the Old Testament (Gen 19:4-11; Lev 18:22 cf 20:13; Jdg 19) and the New Testament (Rom 1:26-27; 1 Cor 6:9; 1 Tim 1:10) (e.g., Grenz 1997:224-242; Coleman 1980:2, 4). It is also described negatively in the ANE texts (MAL A. 18-20) (Matthews 2003:30-31; and literature cited there).

degeneration and so described as detestable and pervasive behaviours respectively. All these detestable and pervasive sexual relations defile the land that it had vomited out the previous settlers who practiced these acts (vv 24-30). These instructions of unlawful sexual unions are addressed specifically to man because he generally took initiative in biblical times (Jdg 14:1ff) (Wenham 1979:253).<sup>41</sup> This is another area whereby great responsibility for maintaining the sanctity of marriage and healthy familial relationships are placed solely on the husband/father's shoulders.

We do not have any explicit statement concerning how a husband should behave towards his wife. The closest we could get is Exodus 21:7-11 and Deuteronomy 21:10-14. Although these texts mainly deal with concubines, according to the rabbinic principle of *qal wa-homer* (what applies in a minor case will also apply in a major case) (Block 2003:48), if an Israelite man was required to treat his concubine (auxiliary wife) in such respect and dignity, it would not be wrong to imagine that he was to treat his wife (his principal wife for a polygamous marriage) “with even greater dignity” (Block 2003:48). According to verse 10, the husband has to provide for his wife with food [רָאֵן], clothing [תְּשִׂיָּה] and “conjugal rights” [תְּנָה] (Tanakh) (NIV, “marital rights”).<sup>42</sup> These expression of basic needs capture the husband's overall responsibility to provide “peace, permanence and security for his wives”, which is described as rest [חַיִּימוֹן] in Ruth 1:9 (Block 2003:48; see also Westbrook 1998:218; Sarna 1991:121). The husband was also to conduct a proper burial for his wife (Gen 23:16; 35:19-20). In reciprocity, the wife participated in fulfilling God's blessing of multiplication in Genesis 1:18,<sup>43</sup> managed the household including contribution of labour to till the ground (Gen 2:15) and engaged in businesses (Prov 31:10-31),<sup>44</sup> and provided companionship for her husband (Block 2003:72-76).

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<sup>41</sup> But this does not mean that a woman is allowed to have incestuous, adulterous, and homosexual unions. A woman who consented to such a union is also regarded equally culpable and suffered the same punishment as her partner as we can see in Leviticus 20:10ff (Wenham 1979:253).

<sup>42</sup> But see Block (2003:48 and Shalom M Paul cited in Block 2003:48) who renders תְּנָה as “ointment/oil.”

<sup>43</sup> The wife/wives bear children for her/their husband (Deut 21:15, *passim*). Conception was regarded as a divine act and blessing and so barrenness as a curse and shame (Gen 11:30; 25:21; 30:1; 1 Sam 1; see also Gen 18:9-15; 21:1-2; 29:32; Jud 13:3-7; Ruth 4:13-14).

<sup>44</sup> Although there appears to have been a division of roles based on sex and age (see Perdue 1997a:179-182), the boundaries do not seem to have been very rigid. A time when most men would do hunting-gathering and shepherding, some men are reported to have done cooking which was generally regarded as “women's chore” – Cain tilled the soil (Gen 4:2). Abraham (Gen 18:1-8), Lot (Gen 19:3), Jacob (Gen 25:29), Esau (Gen 27:30-31), and Gideon (Jud 6:19).

Although divorce may have been rare occurrences (Blenkinsopp 1997:65), like any other society, some marriages in ancient Israel would also end up in divorce. The Hebrew word for divorce is *twtyrk*<sup>45</sup> (Deut 24:1, 3; Isa 50:1; Jer 3:8) from the verbal stem *trk* (cut). Ironically this is the same stem that is used for making (cutting) a covenant (Gen 15:18, *passim*) that unites two parties. Here it divides two parties. In this researcher's opinion, like *%rb* which is used for a binary oppositions of blessing (Gen 1:22, *passim*) and curse (Job 2:9), the use of *trk* for both uniting (covenant) and dividing (divorce) implies that divorce entails the breaking of the marriage covenant. This reinforces the Old Testament's view of marriage as a covenant relationship (Prov 2:17; Mal 2:14). Unlike the Ancient Near East Text (see Chapter Two), the Old Testament does not provide concrete reasons for divorce (Blenkinsopp 1997:65-66).

Deuteronomy 24:1-4 is the only passage in the Old Testament which sheds some light on the reason for a man to divorce his wife. Verses 1-3 constitute the protasis (stating the conditions of the case under scrutiny) and verse 4 forms the apodosis (Wakely 1997:718; Driver 1902:269; Von Rad 1966:150; Thompson 1974:243-244; Mayes 1979:322; Craigie 1976:304). The text states that if a man finds *rbd twr[* in his wife, he could *ttyrk rps*. The second phrase literally means the husband's writ of cutting off or separation (Driver 1902:271; Phillips 1973:160), which he places in his wife's hand, and sends her out of his house, possession of which will protect the divorced woman, and her future partner, from any charge of adultery (Wakely 1997:718; Wright 1990:217; Phillips 1973:160). Deuteronomy 21:10-14 stipulates that if an Israelite man married his slave woman and later wants to divorce her, she shall no longer remain his slave. She is to have the same right to leave her husband as any free Israelite woman (Phillips 1973:141).

There have been scholarly discussions concerning the meaning and connotation of the first phrase *rbd twr[*, which is given as a ground for divorce. It is translated as "something obnoxious about her" (Tanakh), "some indecency (RSV) "impropriety" (JB), "something shameful" (NEB), "something offensive (REB), "something objectionable" (NRSV), "something indecent" (NIV), "something offensive" (NET). The Hebrew phrase, *rbd twr[*, literally means "nakedness of a thing." In Hebrew, uncovering one's nakedness is euphemism for sexual intercourse (cf. Lev 18:6-18; 20:11, 17, 20-21; Ezek 22:10; 23:29; Hos 2:10). From this perspective, *rbd twr[* is interpreted as adultery (see NET Bible note 1tn). This view is advanced by the school of Shammai

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<sup>45</sup> Based on Hosea 2:4, the divorce procedure seemed to involve a verbal declaration, something like "She (PN) is not my wife, and I (PN) am not her husband," which would represent a reversal of the formula recited at the time of marriage (Block 2003:49). According to De Vaux (1961:35), the Elephantine papyri on divorce formula read: "I hate [i.e., divorce] my wife."

(Wakely 1997:718-719). For their part, the school of Hillel contended that the phrase embraced a broad range of meanings, including childlessness, cultic offences, and even failure to complete household chores (Wakely 1997: 719; Driver 1902:270-71).

Unlike the Babylonian, Assyrian, and Hittite laws which regard adultery on the part of the wife as an offence committed against the husband whose decision whether to punish his wife determined not only her fate, but also the fate of her lover (see Chapter Three), Phillips (2002:74-75) asserts that in Israel adultery was regarded as a sin against God which in all cases demanded the imposition of the death penalty (Lev 20:10; Deut 22:20) (see also Greensberg 1960; Neufeld 1944:163ff). For Phillips this was the distinctive principle of Israel's law of adultery, particularly in the pre-exilic times (Phillips 2002:74-95) (contra, see McKeating 1979; 1981, who contends that death penalty for adultery was not always resorted to). In this researcher's opinion, adultery is the violation of the stipulation of the covenant Yahweh made with his people Israel (Exod 20:14 cf Deut 5:18; see also Lev 18:20; Num 5:12-13, 29; Prov 6:29, 32). Rape and adultery are very serious matters as they threaten the solidarity and community of the family and society (see Hagedorn 2004:240-254). Therefore, it was punishable by death for both the parties. This leads us to an important question in relation to adultery as the chief ground for divorce. If the wife were guilty of adultery, she would have been killed anyway; hence the question of divorce would become obsolete. Therefore, in line the school of Hillel, it is more likely that *rbd twr* refers to an objectionable behaviour other than adultery.

A divorced woman could remarry, but the first husband was not allowed to take back his divorced wife in the event of the death of the latter's second husband or her second divorce (Deut 24:2-4). The reason given is that she had been defiled by her second marriage. In this researcher's opinion, this could be a reference to the concept of the sacredness and permanence of marriage and sexual union between a man and woman (see Wakely 1997:719-720 and literature cited there for further discussion). Based on the absence of recourse made to the courts or to public officials concerning divorce, it would appear that in ancient Israel divorce belonged to internal family affairs (Block 2003:49; Wright 1990:216-217; Phillips, 1973:160; Thompson 1974:245). There is no evidence whether the wife had the legal right to initiate a divorce in the Old Testament, especially in pre-exilic Israel.<sup>46</sup> The reason could be that in patriarchal and patrilocal society, "it would have been

<sup>46</sup> A right of women to initiate divorce is assumed at Elephantine, even in the case of a slave-woman. This right is not given in the Bible and has been attributed to Egyptian influence (Collins 1997:119). Lipiński (1981:9-27) points out that divorce by the woman appears in Egyptian law only in the Persian period, and he suggests that it reflects Semitic influence. But some of the examples Lipiński (1981:15) cites are Babylonian. In the Laws of Hamurabi (LH §§142-143), a woman could not divorce her husband at will, but only if she could demonstrate that he was at fault.

extremely difficult for a woman to deal with the hostility her attempts at divorce might have provoked in her husband's clan and given the fragility of single women's economic status, divorce would surely have been a last resort" (Block 2003:49).

Was divorce morally justifiable in the Old Testament? Based on the texts discussed above, it would appear that divorce, though it was not common, was tolerated when it occurred regardless of on whichever grounds it was effected. We see in Genesis 21:8-14 God sanctioning Abraham's divorce of his wife Hagar. We also see how Ezra commands the post exilic Jews to divorce their foreign wives. Unless we interpret these divorces from the theo-political ideological perspective (see Chapter Five), there is no convincing explanation. God is also reported to have divorced Israel (Isa 50:1; Hos 2:2; Jer 3:1-8), but this would appear to be a "rhetorical device intended to wake the people up to their own infidelities....According to Leviticus 26:44-45 and Deuteronomy 4:29-31; 30:1-10, the judgment could not be the last word. Estranged husband and wife would be reconciled" (Block 2003:50-51). If marriage was commonly regarded as a contract during the Second Temple period, as noted above, it could also be terminated by either party, without necessarily entailing moral culpability (Collins 1997:109-115).

However, Malachi 2:10-16 is vocal in its condemnation of divorce. Here, Yahweh thunders, "I hate divorce" (2:16). Thus for Malachi divorce is spiritual and moral problem on the part of men.<sup>47</sup> In the final analysis, based on the above texts especially Malachi, we could conclude that divorce in ancient Israel was "not a moral right enjoyed by males but a moral offense committed by males" (Block 2003:52). From a responsibility perspective, in addition to keeping the deceased property within the clan and more specifically to rear a son for the deceased brother to keep his

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Westbrook (1988b:84) concludes that "divorce by the wife is a practical impossibility even when theoretically valid." The new Babylonian laws provides only for divorce by the husband (Collins 1997:119-120).

<sup>47</sup> Along with other sins of boredom and malpractice in worship (Mal 1:6-14), personal and professional Priestly corruption (Mal 2:1-9), intermarriage with pagans (Mal 2:10-12), cynicism and contempt of Yahweh (Mal 2:17-3:4; 3:13-14), abusive and exploitative conduct toward the vulnerable in society (Mal 3:5-6), and stinginess in temple contribution (Mal 3:7-12) (Block 2003:51, n. 83), divorce must have become more prevalent by the time of Malachi (post exilic). Block (2003:51-52) interestingly highlights six spiritual covenantal implications brought about by divorce according to Malachi 2:10-16. (1) Within the general flow of the book, the prevalence of divorce is perceived as evidence of a fundamental lack of reverence and fear toward Yahweh. (2) Divorce is perceived as an act of treachery against one's companion, and a fundamental breach of covenant commitment to one's wife (v. 14). (3) Reflecting the communal implications of marriage, divorce is considered together with marriage to pagans to be an act of treachery against the community ("brothers") and a profanation of God's covenant with Israel (v. 10). (4) Intact marriages are prerequisite to producing "godly offspring" (v. 15). People may perform the animal functions of procreation apart from marriage, but a stable home is indispensable for the continuation of a people of faith. (5) A person's treachery against a human covenant partner absolves God of his covenant obligations to that person (vv. 15-16). God rejects the offering of those guilty of marital treachery, and no matter how frantically they plead for his attention, his obligation to the unfaithful is suspended. (6) Treachery is committed in the spirit before it is committed in action. God is not fooled by external acts of devotion when the spirit is fundamentally treacherous.

name alive (Deut 25:5-10; Ruth 4:5, 10) (see Tigay 1996:231-234, 482-483; Blenkinsopp 1997:63-64), in this researcher's opinion, the levirate marriage also bestows dignity on a young woman, thus saving her from going through shame and humiliation of being a widow (Ruth 1:20-21) (for a good summary discussion on marriage and divorce, see Perdue 1997a:182-189).

As noted above, family honour and shame also played a major role in the way marriages were arranged, conducted, and practiced where social parity, economic advantage, and the expansion of kinship network were taken into consideration. A proper behaviour must be maintained, especially by the women. These included the desirability of premarital virginity, the importance for maintaining female chastity after marriage, the production of an heir for the household, and the requirement to uphold the honour of the household through their chaste behaviour and social correctness. The requirement for virginity and chastity were also linked to the production of an heir, which was the primary purpose of marriage in the biblical times.<sup>48</sup> For this reason, in many instances, marriage was not regarded as complete until the birth of the firstborn (Strahan 1913:31). Virginity and chastity ensured that children born to the wife would be the husband's own progeny. Thus it is no surprise, then, that the Old Testament instructions do not impose marital fidelity on the part of the husband as much as it ascribes the same for the wife.

For the father, the focus was paternity, not sexual ethics. For a woman, once married, the integrity of the family took precedence over her marriage itself (see Matthews 2003b:294, 296). For this reason, "promiscuity in the world of the Bible was not simply a lack of sexual discretion but a symptom of the risks that a household was taking with its land and children" (Matthews 2003b:296). Sexual purity on the part of wives and daughters are honours for both these women and their husbands and fathers. Fathers and husbands derived their own honour in large measure from the way they discharged this responsibility of protecting the sexual purity of their women (Pitt-Rivers 1968:78).

Some scholars, for example Phillips (2002:113) suggest that according the Old Testament, especially from the legal instructions, a woman in ancient Israel had no independent legal status, but was treated as the property first of her father, and then of her husband. They come to this conclusion solely based on the fact that compensations for lost of virginity because of rape, injury, etc had to be paid to the woman's father or husband (cf. Exod 21:22; 22:15). In this researcher's

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<sup>48</sup> Not being able to get married and so having no children was a bitter prospect and shame for Israelite women. Thus Jephthah's daughter who was going to be sacrificed because of her father's vows says: "... But grant me this one request... Give me two months to roam the hills and weep with my friends, because I will never marry" (Jdg 11:37).

opinion, this did not support a theory of a woman as a property. This was rather about honour and shame. Through compensation the honour of the father, the family, and the woman herself were restored. It is also about the solidarity and community culture of the family. Bride-price too was not received by the bride herself. It was paid to her father and brothers. In this way the society would know a woman is not an island; she belongs to a family and community and, therefore, to commit any offence against her would mean committing an offence against the entire family and community.

## Excursus Eight

### PARTIAL LISTS OF PATERNAL RESPONSIBILITIES IN THE PATRIARCHAL FAMILY [ba tyb] OF ANCIENT ISRAEL

The following are synchronised partial lists of specific paternal responsibilities in the ancient Israelite family:

In the second commandment of the Decalogue, the consequences of the father's actions extend to the third and fourth generation, that is, the entire *ba tb* (Exod 20:4-5; Deut 5:8-9); the fourth commandment prohibits the head of the household from exploiting his people or animals by having them work while he himself rests (Exod 20:10; Deut 5:14-15); the eighth and tenth commandments forbid the head of the household to covet and seize his neighbour's property, including that of family members (Exod 20:15, 17).

The head of the household was obliged to serve the family by (1) personally modelling strict personal fidelity to Yahweh (Gen 6:9; 17:1-7; 26:5; Deut 6:4-9; Jos 24:15; 2 Ki 18:3; Ruth 2:12); (2) leading the family in national festivals, thereby keeping alive the memory of Israel's salvation (Exod 12:1-20; 16:9-12; Deut 16:13-17); (3) instructing the family in the traditions of the Exodus and Torah (Deut 6:4-9, 20-25; 11:18-25), (4) managing the land in accordance with the regulations of the Torah to ensure the family's security with God (Lev 25); (5) providing the basic needs of food, shelter, clothing, rest; (6) defending the household against outside threats (Jdg 18:21-25); (7) functioning as elder and representing the household in the gate, namely the official assembly of the citizens (Ruth 4:1-11); (8) maintaining the well-being of the individuals in the household and the harmonious operation of the family unit; (9) implementing decisions made at the level of the *hxpvm*, especially decisions involving the *laq* – blood vengeance, redemption of persons and property, and levirate marriage (Block 2003:44, 47). In short, the patriarchal family of ancient Israel was a provider of care for its members and marginal groups – children, fatherless, widows, divorced woman, the sick and the aged, debt servants and slaves, resident aliens, sojourners, hired labourers, Levites, and the poor outside the household (Perdue 1997a:192-203).

In addition to the general responsibilities of the head of the household (father) listed above, the following list summarises an Israelite father's specific paternal responsibilities toward his children, especially towards his sons (Block 2003:52-54):

- a. He gives the child's name<sup>49</sup> (Gen 16:15; 17:19; Exod 2:22; 2 Sam 12:24; Hos 1:4). All Israelite names have meanings and purposes. The name not only expresses the name-giver's faith, it also expresses the name-givers aspirations for the child. The name is inextricably bound up with existence and with the nature and character of a person or deity who bears it (Sarna 1989:121).
- b. He consecrates his firstborn son to Yahweh (Exod 13:2, 12-15; 22:29; 34:1-20; Num 3:11-13; 8:16-18; 18:15).
- c. He circumcises his sons on the eighth day (Gen 17:12; 21:4; Lev 12:3).
- d. He delights in his sons (Prov 3:12), shows compassion on them (Ps 103:13), and loves them (Prov 13:24; Hos 11:1-4).
- e. He assumes responsibility for his sons' spiritual development, modelling before them a deep personal commitment to Yahweh and his Torah (Deut 6:5-6).
- f. He diligently instructs his sons in the Torah and the traditions of deliverance and covenant (Exod 12:24; 13:8; Deut 6:7-9 20-25) (Wright 1990:81-84).
- g. He guards his own ethical conduct so that his sons would not be implicated in his sin (Exod 20:5; Deut 5:9).
- h. He instructs his sons in the way of wisdom, develops their characters and skills for life and vocation, and teaches them to follow his footsteps (Prov 1-9).
- i. He disciplines his sons (Deut 8:5; 2 Sam 7:14; Prov 13:24; 19:18; 22:15; 23:13-14) and present those who refuse to be corrected to the elders court (Deut 21:18-21).
- j. He manages his family judiciously and passes down the family name and land to his sons, with the firstborn as the prime heir, for the continual survival of the family and continual holding of the family land (Deut 21:15-17).
- k. He arranges marriages for his sons (Gen 24; Jdg 14) (but see Hamilton 1992:562 who argues that there is no evidence in the Old Testament that parents arrange marriages for their sons and daughters).
- l. He blesses his children before he died (Gen 27; 48-49).

Owing to ancient Israel's patrilineal and patrilocal systems, it is no surprise to see then that the Old Testament is more elaborate in listing a father's responsibilities towards his sons than his daughters. However, that does not mean that daughters were neglected. It is true that there are

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<sup>49</sup> There are also cases where the mother is the one who names her child (Gen 29:31; 30:6; 35:18; 38:28; Jdg 13:24; 1 Sam 1:20; 4:20; Isa 7:14).

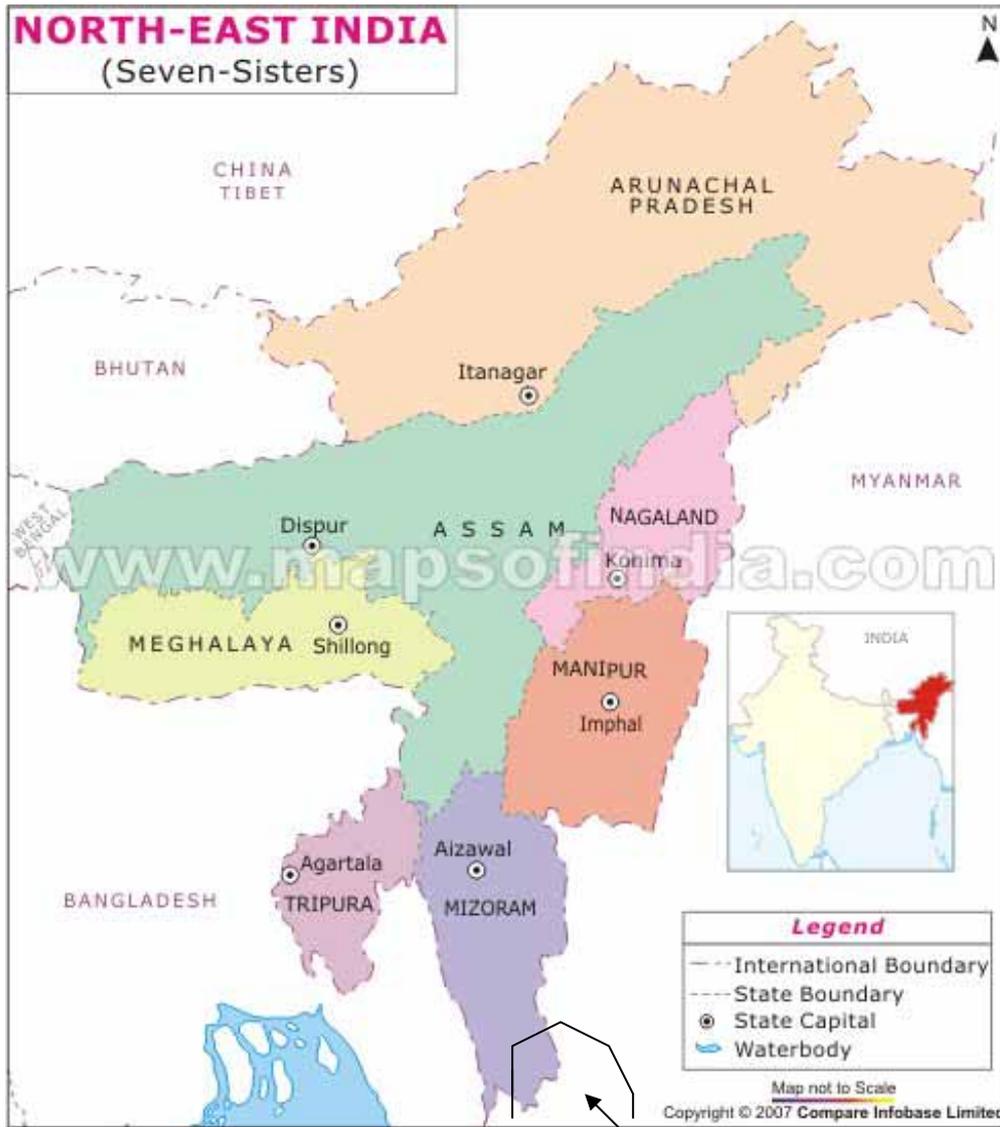
several cases of paternal abuse of daughters in the Old Testament.<sup>50</sup> A father's love and affection for his children is inclusive of his daughter could also be deduced from his (Ezek 16:1-7; 24:25). Specifically, a father encourages and protects his daughter to remain a virgin until she gets married (Exod 22:16-17; Deut 22:13-21),<sup>51</sup> arranges his daughter's marriage and provides her with a dowry for his daughter's dignity and security (Gen 29:24, 29), protects her from her own rash vows (Num 30:2-15), provides security for his daughter if her marriage fails, either because of her husband's death or marriage problems including divorce<sup>52</sup> (Block 2003:54-56).

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<sup>50</sup> Especially in the book of Judges, a father could sacrifice his daughter in the interest of a male guest (Jdg 19:22-24 cf. Gen 19:7-8), for his own military honour (Jdg 11:29-40), and sentimental loyalty to a distant male relative (Jdg 21:19-24). But it must be noted that this was a time when "everyone was doing what was right in his own eyes." The author(s) of these texts give no impression that it was acceptable custom. It was rather a story of how degenerated the society had become.

<sup>51</sup> For this reason, he would vehemently stand up in court for his daughter against her husband if the latter accused her of not having been a virgin at the time of the marriage.

<sup>52</sup> In Gen 38:11 Tamar went back to her father's house but still remained under the authority of Jacob because of the anticipated levirate marriage. A Levite's concubine went back to her father ((Jdg 14:20-15:2). Naomi told his two daughters-in-law to return to their mothers' houses (Ruth 1:8).



**MARÂLAND**

**A map showing the location of Marâland in India and Myanmar**  
(Source: Google - Compare Infobase Limited 2007).

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Hebrew and Greek Fonts Used in the Dissertation:

Bible Works Hebrew Font (bwhebb) and Greek Font (bwgrkl) are used in this dissertation.