

## Legal Rules on Incest in the Ancient Near East

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Incest is a universal taboo, and this was no less so in the ancient world, but precision as to what relatives were prohibited comes late in an ancient culture's development if at all. The story of Oedipus should be sufficient to show the Greeks' abhorrence of sex with a blood relative even when it was unintended, yet no Greek *polis* whose laws are extant dealt with it. Among the Romans, the Twelve Tables are silent on the subject nor are there any enactments of the popular assemblies dealing with this issue, but those who violated this uncodified restriction were hurled from the Tarpeian Rock. A clear outline of this aspect of Roman law does not emerge until the imperial period of Roman history when emperors, the Senate and jurists took action, usually in response to particular cases, with the death penalty carried out with decreasing frequency (1).

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1) See Percy Elwood CORBETT, *The Roman Law of Marriage* (Oxford : Clarendon Press, 1930), pp. 47-51 for discussion.

## Mesopotamia

This imprecision and tardiness in codification (if any at all) also occurred in the ancient Near East. The earliest known collections of laws are silent on the issue. The only direct references in any of the Mesopotomian legal collections occur in sections 154-158 of the Laws of Hammurapi. Section 154 states that a man who has sex with his daughter must leave his city. We shall see that throughout the Near East, where blood relatives are involved, the typical penalty was death or some form of ostracism or exile. While it is possible that these forms of punishment served the purpose of ridding the community of a source of spiritual pollution, in this case, the purposes were also practical: to demonstrate the community's outrage at the father's abuse of his parental authority and to protect the daughter from further sexual abuse. Since the issue here is the father's abuse of his authority over a person in no position to resist, the daughter was not punished.

The ramifications of sexual impropriety on the part of a man with a woman betrothed to his son is the subject of sections 155 and 156. Section 155 states that if a father chose a bride for his son, and the father "laid in her bosom" after the son had intercourse with her, the father shall be put to death by being bound and thrown into the water. The next section states that if the father had intercourse with her and the son did not, the father must pay the woman a half mina of silver and return to her whatever property she brought from her father's house, and she was free to leave and marry whomever she wished. The legal

question dealt with here is at what point does a father's misconduct toward his son's bride-to-be become something more serious than interloping. The legal doctrine that emerges from these two cases is that a son's intercourse with a woman, even though not yet legally married to her, established a family relationship that created an incest bar against the father (2). The vulnerable and ambiguous status of the woman exempted her from punishment.

Section 157 states that if a man has intercourse with his mother after his father has died, both are put to death by burning. Intercourse during the father's lifetime was covered by the laws of adultery as well as the incest taboo. If at the time of the father's death, the mother was divorced from the father, presumably the same uncodified taboo applied. Here Hammurapi puts to rest any idea that the laws of inheritance and succession take precedence over those of incest, especially where a son and his own mother are involved. This act was regarded as so outrageous that, unlike in the previous sections, no allowance was made for the woman's vulnerability to mistreatment. The law presumed that a respectable woman does not engage in such conduct under any circumstances, and she was, therefore, put to death in the same manner and at the same time as her son. Indeed, the offence is so obvious and egregious it may have been introduced here simply

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2) G. R. DRIVER and John C. MILES, *The Babylonian Laws* (Oxford : Clarendon Press, 1952), I, 318-320 (hereinafter D&M), regard the son's sexual act as establishing a marriage which meant that the father was punished as an adulterer. If that were so, his daughter-in-law, pursuant to sec. 129, would be put to death along with him.

to contrast with the more problematic situation described in the next section.

Section 158 deals with a situation that has more moral ambivalence to it, namely, the relationship of a son toward his widowed foster- (or possibly step-) mother (3) who has born children. The law states that if a man was "caught in the bosom" of this woman after his father's death, he shall be "cut off from his father's house". On the one hand, the woman is not a blood relative of the deceased father's son, and if she had not been married to the son's father, there would have been no bar to their cohabitation or marriage. On the other hand, as with the prospective daughter-in-law discussed above who had already cohabited with her betrothed, the deceased father's relationship with the foster-mother, as evidenced by her having born children, might create an incest bar to his son. Also, since a widow's rights in her husband's estate were restricted, and she was often supported by remaining in her late husband's house along with his sons (4), she was sexually vulnerable, and so, like the daughter described above, she was not punished. This vulnerability is underscored by the law not mentioning marriage but the man being "caught in the bosom" of the widow. This expression, which we have already seen in section 155, describes a sexual encounter that was casual. The "father's house" mentioned in the punishment is, in all probability, a technical term referring to the father's estate in which the son, as heir, would have a share. The penalty, therefore, is far more serious than

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3) See D&M, II, 231 for philological discussion.

4) D&M, I, 322.

mere removal from a dwelling (5). A Mid-Assyrian law (#46) dealing with the support of widows may throw further light on this matter. This law specifies that if a man died and left behind two widows each of whom had sons, the law permitted one of the stepsons to marry the "later wife" and by so doing, all the other sons were relieved of any obligation to support her. On the basis of this law we may assume that in Assyria in the thirteenth century B.C., marriage with a stepmother was permitted. In the light of the Assyrian law, we may assume that Hammurapi was concerned with a man abusing his rights as an heir and not incest, and he probably would have had no objection to a man marrying his widowed step- or foster-mother.

The fragmentary evidence before us indicates that according to Hammurapi, incest, even though it involves both a man and a woman, was regarded primarily as a crime that a man commits since he is the one who initiates sexual relationships and was something that a woman was willingly or unwillingly drawn into. This is seen by the fact that each of these laws begins with the phrase "If a man...", even when the woman was punished. Beyond this, there seems at first sight to be little consistency. Sex with an ascendant blood relative, such as a mother, was a capital offence for the man but with a descendant blood relative, such as a daughter, ostracism sufficed. Similarly inconsistent are the cases of relatives connected by marriage. Sex with a son's fiancée was a capital offence, yet a widowed step- or foster-mother was probably permitted if the union had the dignity of matrimony. The

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5) See for example secs. 171, 172, 183. See D&M, I, 334-335 for discussion.

only female relative to face punishment at all was the mother who suffered the same penalty as her son. By contrast, the prospective daughter-in-law was not only held blameless but was compensated. In the absence of any information regarding other relatives or situations, these seemingly inconsistent rules become sensible if we see them not primarily as incest laws but as part of a desire on the part of the lawgiver to prevent women from being unfairly taken advantage of by the Babylonia's patriarchal family system. This is also seen in such provisions as the securing the marital rights of wives whose husbands desert them or are taken captive, requiring compensation to blameless divorcees, setting up procedures whereby a wife may legally leave a husband whom she finds repugnant or forbidding the divorce of a sick wife (6).

The Mid-Assyrian Laws deal with permitted and forbidden unions only indirectly. We have already noted that according to section 46 a marriage with a widowed stepmother was permitted, especially if it facilitated her financial support. Three other sections of Tablet A of the Mid-Assyrian Laws, which obliquely deal with the Assyrian conception of levirate, offer clues to unions with relatives who were permitted. Section 30 is concerned with the disposition of a betrothal gift conveyed by the bride-to-be's father to his daughter's future father-in-law when the brother of the man to whom she was betrothed dies and the surviving brother married his deceased brother's widow instead of the woman whose father gave the betrothal gift. This law assumes that marriage to a sister-in-law whose husband is deceased was permitted. Whether such a marriage would be

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6) Secs. 133-140, 142, 148.

permitted if the brother were alive and the sister-in-law divorced is unclear.

Section 33 deals with a woman who, though married, lived in her father's house and became a widow. If she had sons, she could live with one of them. If she had no sons, her father-in-law shall marry her off to one of his sons. We thus have an implicit assumption that an union with a widowed sister-in-law was permitted. Following a break in the text, the law states, "or if he wishes, he may give her in marriage to her father-in-law". The break makes it unclear who "he" is, but the sanction of a marriage on the part of a widow to one's father-in-law is clear enough (7). As with the sister-in-law in section 30, we remain in the dark whether the marriage would be allowed if the woman in question were a divorcee rather than a widow.

## H a t t i

The Hittite Laws, though far from comprehensive, deal with incest much more extensively and directly than Hammurapi or the Assyrians, but because of the absence of a prologue or epilogue to the Hittite Laws and the lack of any clue as to who (if anyone) was the promulgator, determining an underlying purpose to the legislation is more difficult. The Hittite incest prohibitions are found towards the end of the second of two principle tablets amid other sexual offences, chiefly bestiality. As in Hammurapi,

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7) For the levirate perspective of these laws, see Raymond WESTBROOK, "The Law of the Biblical Levirate", *RIDA* 24 (1977), 86.

they are all directed against the man, as shown by such introductory phrases as "If a man...", "If a man's...", "If his..." (8). The prohibited unions may be classified into three categories : (1) unions which are prohibited absolutely, (2) unions which are only temporarily forbidden by being limited to the lifetime of a closer relative and thereafter are permitted and (3) unions which are forbidden because they were with relatives of permitted relatives (9). One of the most striking aspects of these Hittite regulations (and this applies to the bestiality laws as well) is that nearly half of them are expressly permissive rather than prohibitive. A regulation may say that in a given case "there is no punishment". This is not characteristic of any of the other Hittite laws, and it rarely occurs in the other ancient Near-Eastern collections of laws. As we shall see, this formulation is useful in explaining the second class of prohibitions and in clarifying the status of certain unions which, even if lawful, may be regarded by some as improper.

Section 189, which prohibits sex with one's mother, daughter and son represents prohibitions of the first type. If the purpose of this provision is to forbid sexual relations with members of a man's nuclear family, it is obviously incomplete, since a father, sister or brother are not mentioned. It is also curious that a prohibition on pederasty with a son would be juxtaposed with unions with female relatives. This is the only form of homosexual conduct that the Hittite law explicitly

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8) Unless otherwise noted all direct quotations from the Hittite Laws are drawn from Albrecht GOETZE's translation in *ANET*, pp. 196-197.

9) For an alternative method of classification, see Richard HAASE, "Der Inzest in den sog. hethitischen Gesetzen", *WO* 9 (1977), 72-74.



prohibits. These omissions are understandable if we assume that the "man" being enjoined here is himself the father in a nuclear family, and his own father and siblings are members of nuclear families of their own.

Sections 190, 192 and the first half of 195 are of the second type. Section 190 prohibits sex with a man's stepmother while his father (the stepmother's husband) is still alive. When the father dies, she is explicitly permitted to her stepson. Sexual intercourse with her on the part of the stepson or any one else prior to her husband's demise would be fully covered by the laws on adultery (10). As we have stated with regard to section 158 of Hammurapi and section 46 of the Mid-Assyrian laws, a widowed stepmother was not prohibited to her late husband's son, and the same is true among the Hittites. Since she is permitted to her stepson when her husband dies, the issue is not affinity, because if that were the case, she would be forbidden to her stepson for all time. But what if the stepmother were divorced? By the aforesaid logic a divorced stepmother should not have been prohibited to a stepson any more than a widowed one since the relationship to the son that was established by the father's marriage no longer existed, but apparently the living presence of a father did make a difference, and hence, sexual relations, within or outside matrimony, were prohibited. In view of the fact that this is not a type # 1 prohibition, what is probably at issue here is the appearance of wrong-doing rather than wrong-doing itself. If it is not the appearance of adultery (although that is certainly possible), it is more likely the revulsion at the appearance of a

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10) Secs. 197-198.

woman being seemingly handed around from one family member to another.

The first part of section 195 is in a similar vein. It prohibits sexual intercourse with a brother's wife while the brother is still alive. As in the section just discussed, such an union would already be covered by the law against adultery, which forbids sex with another man's wife whether a relative or not. Furthermore, the rules of Hittite levirate outlined in section 193 (11) permit, if not require, a man to marry his deceased brother's widow. So why this law ? The issue here is, the relationship of a divorced woman towards her brother-in-law while her ex-husband is still alive, and, as with the stepmother and father discussed in the preceding paragraph, the living presence of the former husband was crucial, and probably for the same reason as stated above, namely, to avoid the appearance of impropriety.

Section 192 appears to be a converse of 195a. It is a simple statement to the effect that if man's wife dies, there is "no punishment" if he marries his deceased wife's sister. Such a marriage would be impossible in the lifetime of the would-be widower's wife, because the Hittites were monogamous (12), but, like the stepmother and sister-in-law discussed above, in the absence of any ties of consanguinity, if a man divorced his wife, there would be no bar to his marrying his ex-wife's sister, and this is what this law implicitly prohibits. Just as in the sections just discussed where the issue was revulsion at a woman being

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11) See below for discussion.

12) Ephraim NEUFELD, *The Hittite Laws* (London: Luzac & Co., 1951), p. 192.

handed around from one male family member to another, here we see the converse: the repugnance of a man moving about from one sister to another.

The third group of prohibitions, taken up in section 191, the first half of section 194 and the second half sections 195 and 200A, deals with sexual intercourse with relatives of someone who is permitted. Section 191 states that a man was not punished if he cohabits with free women who are sisters and their mother, provided the liaisons took place in different locales, presumably because the man was unaware that these women were related to each other. The law goes on to state that there can be no such presumption of ignorance on the part of the man if the liaisons occurred in the same general locale. In the light of section 192, which permits marriage with a sister of a deceased woman, the relative that determines the prohibition is the sisters' mother. Once a man has had sex with her, he becomes prohibited to her daughters. Section 195, as we shall see, extends this prohibition to include marital unions. The first clause in section 194, which as a whole deals with fornication and prostitution, indicates that the stricture in 191 does not apply if the women are slaves. The second clause of section 200A offers a further clarification by stating that a casual union that is with a woman who is a foreigner and her mother or sister is permissible.

The second half of section 195, in effect, expands the discussion of casual sex in 191 to marriage. This law states that a married man, whose extra-marital sexual intercourse is not adultery unless it involves another man's wife, is forbidden to have sex with his wife's blood relatives, that is, her mother,

daughter and sister. The inclusion of the wife's sister along with her mother and daughter in the prohibition seems to contradict section 192 which permits a widower to marry his sister-in-law. We have already noted that section 192 would prohibit a man from divorcing his wife to marry his sister-in-law. In the light of 191, where even casual sex between a man and sisters is forbidden, we may assume that *a fortiori* a marriage with a woman that took place as a result of divorcing her sister would be unacceptable. In any case, section 195b, which prohibits a man's wife's blood relatives, may be regarded as symmetrical with 189 which prohibits his own.

The second clause in section 194 is the opposite case of the third class of regulations, because instead of dealing with one man having sex with women who are related to each other, this section deals with men who are related having sex with the same woman. Two situations are described, both dealing permissively with simple fornication and prostitution. The first states that if male blood relatives have sex with the same free woman, there is no punishment. Similarly, the second case states that there is no punishment if a father and son cohabit with the same prostitute or slave girl. Given the sexual freedom men had, provided the intercourse was not incestuous or adulterous, these provisions would seem self-evident to the point of superfluity, but in light of sections 191 and 195 which restrict a man's dealings with related women, some clarification was probably deemed necessary when the situation was reversed.

Thus far the presumption in all the laws has been that the perpetrator or instigator of any unlawful union was a free male.

As far as slaves were concerned, all the clauses of section 194 make it clear that slave women were regarded as permitted sexual objects, and, as section 191 indicates, this included situations that would not be allowed if they were free (and in the light of 200A native born). Section 196, however, deals with a man's male or female slaves who, their legal status as property notwithstanding, bear some responsibility for violating the laws of incest, or, within the context in which these laws are found, some other serious sexual offence. This law specifies that instead of being put to death, sheep were substituted and the offending slaves were removed from the community, and presumably as a safeguard against the offence being repeated, each was placed in a different location. Here, as elsewhere in the laws of the ancient world, the legislator had to wrestle with the idea of the slave as a "thinking thing" capable of wrong-doing, but because of the power of the owner, the slave cannot be regarded as a free agent who can or must take full responsibility for what she or he does. This law illustrates the dilemma. Such issues as to whether the owner knew or approved or was somehow involved in his slaves' criminal conduct and what his legal liabilities were are not addressed here (13), but since the legislator thought that the slaves' actions could not be wholly separated from the owner's authority or responsibility, the problem was resolved through a compromise whereby those slaves who were guilty of serious wrong-doing were permanently removed without resort to execution.

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13) The master suffered some consequences by loosing the services of the slaves by virtue of their relocation.

Most important among the permissive regulations are the ones that define and regulate the Hittite version of levirate marriage. The literature on levirate is too immense for extensive discussion here, but two points should be briefly made. First, the institution had a variety of beneficial functions or purposes, and what the primary ones were may vary from one society to another, one time to another, and even from one family to another. Second, for every incentive there was to engage in the practice, there were countervailing disincentives, and the survival of the practice depended largely upon whether the incentives seemed more attractive or obvious than the disincentives. Some of the useful purposes of levirate include providing security and sustenance for widows, keeping a woman of child-bearing capability within the family, preventing a woman who may have dower property from leaving the family, and, by legal fiction, regarding the offspring of a levirate marriage as a perpetuation of the deceased brother's family if he died childless. On the negative side, there is the economic strain of supporting the widow and the additional children within a family, the diminution of the size of each child's legacy when the man the widow marries dies, the abridgement of a widow's freedom to marry whom she wishes or not to remarry at all, and if the idea of perpetuating a childless deceased brother's family is a positive consideration from the standpoint of the deceased brother, it is a negative one from that of the surviving brother, because he stands to lose an inheritance to the offspring he would be obliged to engender from the widow. On the basis of the information at hand, it is impossible to determine what the primary purpose of levirate was in Hittite

society or to ascertain what advantages or disadvantages accrued to a Hittite man or his family if he performed or declined to perform levirate. In any case, if the surviving and otherwise eligible male relative were already married and living in a society which, like that of the Hittites, was monogamous, it might not have been possible for the man to perform levirate even if he wanted to, unless an exception to monogamy were permitted or required in the case of levirate. Also militating against the practice is the feeling or perception that such a marriage is incestuous even if the law permitted it.

In section 193, the unknown Hittite legist defines and regulates levirate and also attempts to deal with the impact monogamy and incest have on the practice. The law says, "If a man has a wife and then the man dies, his brother shall take his wife, then his father shall take her. If in turn also his father dies, one of his brother's sons (14) shall take the wife whom he had. There shall be no punishment". The most notable difference between the Hittite law and the biblical is that the Hittite man need not die childless for levirate to come into play. If that is true, a levirate situation was likely to arise much more often among Hittites than among Israelites, and the surviving brother may have had to bear financial responsibility for his deceased brother's children as well as his widow. On the other hand, unlike in Israel, which permitted polygamy, the Hittites were

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14) The decedent's nephew. Less likely is the position of H. GÜTERBOCK in *JCS* 15 (1961), 72 where he maintains that "his" here means the father's brother, not the husband's, thus making the sons first cousins to the decedent. This makes the relationship to the widow more distant and, from the standpoint of incest, makes the possibility of marriage to the widow less problematic.

monogamous. On simple economic grounds, therefore, surviving brothers who were already married and had children would be reluctant to perform levirate, especially if the deceased brother left one or more children as well as a widow. Also, an unmarried brother would lose his freedom of choice as to who he would marry. This may be why more relatives were made available in the Hittite law than in the scriptural law, going as far as to include the decedent's nephews if his father were not available. The legislator went on to give assurance that under these conditions, that is to say, when the woman in question was the widow of a deceased brother, a marriage, presumably with levirate intent, with a sister-in-law, daughter-in-law or paternal aunt violated no law. The fact that such an assurance had to be given and also in the light of our analysis of section 192, if the woman was a divorcee instead of a widow, these unions would probably have been prohibited. And thus we come to the second problem which characterizes all levirate, economics aside, namely, the reluctance, rational or not, to marry such a close relative. The assurance, written into the text of the law, that there would be no punishment if these marriages were undertaken seems to indicate that there were many in Hittite society who felt revulsion towards them. H.GÜTERBOCK has called attention to an earlier recension of this law in which the statement that there would be no punishment does not appear (15). The fact that this phrase had to be inserted in a later version indicates that the negative aspects of levirate were beginning to draw even with the positive ones. On the basis of these two considerations, economics and incest, we may also

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15) GÜTERBOCK, p. 72.



assume that the refusal of an eligible male relative to get involved in a levirate marriage would also carry no punishment.

Incestuous unions and the forbidden forms of bestiality are condemned in the Hittite law as *hurkel*. In addition to the use of this condemnatory term, according to sections 187 and 188, which declares bestiality with sheep or cattle to be unlawful, the law specifically states that the offender is to be put to death (though royal clemency is possible) (16). In contrast, the only Hittite incest law which specifies a definite penalty is section 196, which deals with incest in which slaves are involved. If this punishment represents, as I have stated, some sort of compromise due to the offenders' servile status, and therefore appears in the laws to indicate an exception to what the law would usually demand, then we may infer that among the Hittites, incest was punishable by death. But the fact that it can only be inferred means that how incest was punished and more specifically how the term *hurkel* relates to the punishment of the offence is still open to speculation. Albrecht GOETZE, relating the term directly to punishment, translates, "it is a capital offence" (17); others such as FRIEDRICH (18), IMPARATI (19) and NEUFELD (20), focusing on the moral impact of the act, translate the term as *Greuel*, *azione esecranda* and "abomination" respectively. Citing

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16) Section 199, which forbids coupling with a pig, also specifies the death penalty along with the possibility of royal clemency, but there is no mention of *hurkel*.

17) See n. 8.

18) Johannes FRIEDRICH, *Die Hethitischen Gesetze* (Leiden: E.J. Brill, 1959), pp. 83, 85, 112-113.

19) Fiorella IMPARATI, *Le leggi ittite* (Rome: Ateneo, 1964), pp. 171, 173, 177, 179, 320-322.

20) Pp. 53-56, 189.

more recently discovered texts, Harry A. HOFFNER, Jr. has shown that execution was not always the penalty for incest and therefore uses more neutral phraseology, "forbidden sexual combination" (21). The earliest evidence (c. 1650 B.C.) indicates that those who committed incest or bestiality were put to death unless spared by the king, in which case the offender(s) were banished from their city, and in either case the city or village where the crime took place was ritually purified. By the thirteenth century, long after this set of laws was composed, these punishments were abandoned in favor of purification rituals for both the city and the offender, with the latter also obliged to donate money and goods to the local temple (22).

## I s r a e l

Since the Pentateuch contains three so-called law codes for the same community, it is possible not only to examine the laws themselves but also, to a limited extent, trace their development. The earliest of the codes, the Covenant Code (23), which is embedded in the J-E stratum, is silent on the subject of incest, but the J-E narrative does contain references to marriages and sexual unions with close relatives. Some of these relationships are accounted as praiseworthy; others are condemned, and still others are stated without comment, and, as we shall indicate, most of

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21) "Incest, Sodomy and Bestiality in the Ancient Near East", *AOAT* 22 (1973), 84.

22) *Ibid.*, pp. 83-90.

23) Ex. 20:22-23:33.

them were forbidden by the Holiness Code of Leviticus. In order to defame the nations of Moab and Ammon, the author imputed their origins to Lot's daughters getting their father drunk and seducing him to commit incest with them (24). As we shall see, this type of incest is strangely missing from pentateuchal codes that forbid sex with more distant relatives. Within the context of levirate, Tamar is praised for seducing her father-in-law, Judah, but sex with a daughter-in-law is condemned in Lev. 18:15 and is a capital crime according to Lev. 20:12. Judah was regarded as acting wrongly when he withheld his last surviving son from doing his levirate duty with Tamar, yet Lev. 18:16 and 20:21 condemn unions with a sister-in-law. We are furthermore told that Sarah was Abraham's half-sister (25), a marriage forbidden in Lev. 18:11 and 20:17. Furthermore, Lev. 18:12 and 20:19 forbid the union of an aunt and her nephew, yet Moses, Aaron and Miriam were the offspring of such a marriage (26). Finally, Jacob's marriage to Rachel during the lifetime of her older sister, Leah, is prohibited by Lev. 18:18.

Deuteronomy devotes fourteen chapters (27) to legislation, and much of it deals with family matters, yet only one half of one verse, Dt. 23:1, deals with incest, and at that, it presents problems. The first half says, "A man shall not take (as a wife) his father's wife...". The Hebrew verb, *yiqah*, which means take, should be contrasted with *šokeb*, which means to lie. The

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24) Gen. 19:30-38.

25) Gen. 20:12. To this may be added Tamar's statement to her half-brother, Amnon, that their father, King David, would have no objection to their marrying (2 Sam. 13:13).

26) Ex. 6:20. Also Num. 26:59 though not part of J-E.

27) Dt. 12-26.

former refers to marriage; the latter refers to sexual intercourse which may or may not be within marriage (28). The laws of adultery would forbid any sex with one's mother or stepmother while the father is still alive and married to her, so as we have seen with the Hittite law, this rule seems to have no independent purpose unless it refers to a mother or stepmother who is a widow or divorcee. We have already noted that elsewhere in the ancient Near East marriage with a widowed stepmother was permissible, and apparently the Deuteronomist wanted to disallow it, but his use of word *yiqah* leaves open the possibility that having her as a concubine would be permitted. Whether or not that was his intention, it is inconceivable that by prohibiting marriage with one's own mother, he meant to implicitly sanction concubinage or casual sex with her. In the curses (and the accompanying ceremony), which appear at the conclusion of the Deuteronomic code in order to give sanction to the laws, the ambiguity (or just sloppy draftsmanship) in Dt. 23:1a is cleared up by cursing the man who "lies with" - *šokeb 'im* - his father's wife, thus showing strong disapproval of sexual intercourse of any kind with one's mother or stepmother (29). In addition, a man is cursed for lying with his sister, maternal or paternal half-sister or mother-in-law (30).

The second half of the verse says, "... and you shall not uncover your father's skirt". Just as we have already noted a Hittite incest law that included a rule against pederasty, here we

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28) NEUFELD, *Ancient Hebrew Marriage Laws* (London: Longmans, Green & Co., 1944), pp. 191-192.

29) Dt. 27:20.

30) Dt. 27:22-23.

have an injunction against homosexual intercourse with one's father occurring in the same sentence as an incest prohibition (31). The author's intention here was to forbid in one breath and with equal force what may be regarded as two extremely repugnant forms of incest and homosexuality. When the author of the Holiness Code composed his legal formulations, he clearly had the impact of this linkage in mind.

Because of the importance the priestly document (P) attached to moral, physical and spiritual purity, and, indeed, regarded them not as separate categories but as an intertwined and unified whole, it should come as no surprise that no ancient Near-Eastern legal collection covers the subject of incest as thoroughly as the Holiness Code. In fact, the same subject is treated twice: in Lev. 18:6-18, where the rules are stated apodictically and as moral imperatives with no specific punishment mentioned for any of the offences listed, and in Lev. 20:10-21 where the forbidden unions appear as cases with specific punishments for their violation. Like the Hittite rules, they appear in a general context of other sex offences. In these rules, the prohibited relatives include not only the father, mother, stepmother, full or half sister and mother-in-law with whom sex or marriage the Deuteronomist already prohibited or cursed but the list is expanded to include bans on a stepsister, an aunt (including a paternal aunt by marriage), a sister-in-law, a stepdaughter, a granddaughter and a stepgranddaughter. Also, a man could not marry a woman and

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31) On "uncovering the skirt" as a euphemism for sexual intercourse and that this verse contains two separate prohibitions, see Anthony PHILIPS, "Uncovering the Father's Skirt", *VT* 30 (1980), 38-43.

then have sex with her daughter or marry and then in his wife's lifetime have sex with her sister (32). Much has been said about the fact that a daughter is missing from this list of prohibited relatives. These texts prohibit more distant relatives, and the author of the story of Lot and his daughters regards such a union as a sordid one and assumes his readers feel the same way (33). Let me only point out that of the few ancient Near-Eastern legal collections that discuss incest, none do so comprehensively, and by comparison the "daughter gap" in the Pentateuchal laws,

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32) NEUFELD, pp. 194-206.

33) NEUFELD (pp. 198-199) has attributed it to "some mishap" or "an accidental omission". Given the crucial role redactors have played at reworking the biblical text before it became canonized, it is incredible that none of them chose to "correct" this "omission". Others have seen a desire on the part of the writer to hold the number of prohibited relatives to ten or twelve in order to fashion these laws into a decalogue or dodecalogue, but this could have been done by omitting relatives more distant than a daughter. (See, for example, Stephen BIGGER, "The Family Laws of Leviticus 18 in their Setting", *JBL* 98 (1979), 187-203 and Karl ELLIGER, "Das Gesetz Leviticus 18", *ZAW* 26 (1955), 1-7). Guillaume CARDASCIA in "Égalité et inégalité des sexes en matière d'atteinte aux mœurs dans le Proche-Orient", *WO* 11 (1980), 9-10 has argued when these rules were written, sex between a father and his daughter was an abuse of patriarchal privilege that was not yet worthy of unequivocal legal condemnation, and thus the absence of the prohibition is not an accident. His position is substantially based on the fact that the laws of Hammurapi punish incest with a mother by putting both the man and the woman to death whereas with a daughter, the punishment is less severe - the father is banished from his house, and the daughter is not punished at all. Also sordid or not, sex did take place between Lot and his daughters, with none of them condemned or punished for it. The reasons for the differences in the punishments in the two Babylonian laws and the issues involved in the story of Lot and his daughters have already been discussed. To that discussion we may add here that given the importance of the patriarchal family in Babylonia and the absence of jails as penal institutions, the symbolic as well as practical value of being expelled from one's city should not be discounted simply because the father was not put to death. Also, CARDASCIA did not take into account the Hittite law (#189) that made incest with either a mother or a daughter a capital offence.

though unfortunate and mysterious, is hardly so fatal an omission as to render discussion of the regulations we do have pointless.

Like all the other incest rules we have come across, they are addressed to the man (including the case-form rules, all of which call for identical punishments for both the man and woman) and, except for the father, the forbidden relatives are all female. The use of the apodictic form to exhort a man from abstaining from incest is itself a unique feature, but there also are other significant differences in the way the rules are drafted in the Holiness Code, all of which seem designed to enhance the moral impact of the rules upon a male reader. The author carries forward the mood already established by the apodictic form by the constant use of the second person singular possessive adjective *vis-à-vis* the forbidden relative: "your mother", "your father's wife", "your son's daughter or your daughter's daughter", *etc.* A good example of this style occurs in verse 9, which contains prohibitions of a sister and half-sisters, where the possessive is used three times : "Your sister... your father's daughter or your mother's daughter". The same relatives are prohibited in verse 11 using different phraseology, but we see again a three-time use of the same possessive form: "your father's wife's daughter... your father's house... your sister".

Other approaches include associating incest with other sexual practices thought to be abhorrent and avoiding, as much as possible, the idea that incest with a female relative violates a man's possession, the extensive use of the word "your" notwithstanding. We see both of these approaches at work in the first apodictic prohibition in verse 7 which harks back to the

double prohibition in Dt. 23:1. In this verse, sex with one's father "and" mother is condemned. This double prohibition plus the concluding admonition, "she is your mother. Do not uncover her nakedness", puts incest with one's mother on the same moral level as homosexual sex with one's father but at the same time avoids the idea that sex with one's mother is wrong because it violates a father's possession. Quite the contrary, by this rule, one's mother is prohibited simply because she is a mother and not because she is the father's wife. The next verse says, "Do not uncover the nakedness of your father's wife; it is the nakedness of your father". Although an ancient or modern reader could take this statement to mean that a stepmother is forbidden because she is the possession of her husband (and if on this basis the rule would be obeyed, the ancient legist would not object), when read in the context of verse 7, the imagery of a homosexual relationship with one's father is invoked. The corresponding version in Lev. 20:11 is in a similar vein : "A man who lies with his father's wife has uncovered his father's nakedness". Verse 10 of chapter 18, which forbids a son's daughter and a daughter's daughter, concludes with, "their nakedness is yours". The author thus attempts to link sex with one's lineal descendants to the impurity of seminal discharge (34). In verses 12 and 13 of chapter 18, in which a paternal aunt (35) is forbidden, because "she is your father's flesh", and a maternal aunt is forbidden, because

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34) Lev. 15:2-17.

35) Literally, "your father's sister".



"she is your mother's flesh" (36), the imagery in verse 7, of sex with one's father and mother is reinvoked.

In verses 14 and 16, the possessory idea is combined with the repugnance of homosexuality. In verse 14, the author condemns sex with the wife of a paternal uncle. In the first half of the verse, he forbids this relative in a non-possessory way by likening sex with her to a homosexual relationship with her husband: "Do not uncover the nakedness of your father's brother". The rule then concludes with an admonition that is partially possessory: "Do not go near his wife; she is your aunt". By referring to her as both a wife and an aunt, she becomes, like a mother, forbidden in her own right, with the prohibition unaffected by widowhood or divorce. The version of this law in Lev. 20:20 is similar; it says, "A man who lies with his aunt has uncovered his uncle's nakedness". Verse 16, which prohibits a sister-in-law, is similar: possession is stressed by stating, "It is your brother's wife"; homosexuality is evoked by the statement, "It is the nakedness of your brother".

Verse 15, in which sex with a daughter-in-law is prohibited, is the only one that is completely possessory. One is not to have sex with her simply because, "She is your son's wife".

These rules as restated in chapter 20 carry penalties that are quite severe in so far as they can be understood. Incest with a father's wife or a daughter-in-law is punishable by death to the men and women alike with method of execution unstated. Marriage to a woman and her mother was punished by burning all three. If there was incest with a full or half sister, all parties

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36) Literally, "your mother's sister".

involved were ostracized. For sexual intercourse with an uncle's wife or marriage with a sister-in-law, the penalty for all was childlessness (how this was carried out is unclear). For sex with an aunt, we are told only that both "shall bear their guilt". Lacking contemporary evidence outside of these texts, none of these dispositions can be verified.

These laws are in full accord with P's strong conviction that physical and ritual purity and basic morality are all one and the same (37). But this was not his sole concern. These incest laws prohibit unions that earlier writers portray as permitted or, as in the case of levirate, even required. This and other textual evidence shows that the priestly writer was not only compiling rules relating to the purity of family life but was reforming them with the objective of improving the status of women within the framework of ancient Israel's patriarchal family structure. The use of the phrase, "uncover or reveal the genitals or nakedness" (*goleh 'ervah*) of such-and-such relative, to describe the prohibited union indicates that the author intended these prohibitions to be absolute, to transcend the rules of adultery and to be lifelong from the time the relationship was established (either by birth or marriage), with the death of the relative whose linkage to a man delineates the relationship leaving the prohibition unaltered (38). Hence, unlike other codes, a stepmother does not

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37) One example of this intertwining of concerns among many that could be cited is that amid these laws on incest and those against homosexuality and bestiality is one banning sexual intercourse during menstruation (Lev. 18:19; 20:18).

38) The clumsily worded provisions of Lev. 18:17 make it difficult to determine whether marriage to a woman means that the man may not ever have any sexual intercourse with her grandchildren or means only that he may

become permitted with the death of one's father, nor does a daughter-in-law or a sister-in-law when a son or brother dies, nor does an aunt when one's father, mother or paternal uncle dies, and the same applies to a granddaughter, a full or half sister when a child or parent dies. These rules attenuated the authority of the males of the family to the advantage of the women, because the option of handing around these women either as wives or concubines to other men within the family was foreclosed. The women could not be forced to remain within the extended family as cheap laborers or child bearers, and, pursuant to the reform, all marriages involved the expense of a bride-price for the man seeking a wife (39).

These rules also made it possible for a widow to marry whomever she wished outside the family or to decide not to remarry at all. This is especially true of a widow whose husband died childless and was thus obligated either by custom or deuteronomic law to enter into a levirate marriage with either her father-in-law or her brother-in-law (40). Tamar, in Gen. 38, and the widow in the law in Deuteronomy are depicted as being aggrieved by a father-in-law or brothers-in-law who refuse to do their levirate duty, but apparently it never occurred to either of the authors that the widow might object to such a marriage, regardless of her brother-in-law or father-in-law's interests. The priestly writer's response to the conflicts inherent in levirate is to

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not marry them, and the next verse in which a woman's sister is prohibited to the woman's husband only during that woman's lifetime are two exceptions.

39) Of course, this cost may be counterbalanced by any bride-price received when the women in the family are married off.

40) Gen. 38, Dt. 25:5-10.

declare any unions, marital or otherwise, with a sister-in-law or a daughter-in-law to be incestuous (41). In chapter 20, sex with a daughter-in-law is a capital offence for both the man and the woman, and if the purpose of biblical levirate is to generate offspring in the name of the deceased brother, the punishment for sex with a sister-in-law, childlessness for both offenders, seems quite appropriate (42). A more oblique, but nevertheless significant, feeling about levirate within the priestly clan is the regulation forbidding the high priest to marry a widow (43). According to this rule, the high priest could not perform levirate even if he wanted to. Indeed, is there a man in the Old Testament who wanted to? In each of the three instances in which levirate is dealt with in the Old Testament, the problem seems to be that the man who should perform levirate is unwilling (44), and in two of the three instances the law accorded him an exemption. In the book of Ruth, Ruth's anonymous relative, with no apparent stigma attached, was able to defer his obligation to a more distant but willing kinsman, Boaz. In the law in Deuteronomy, the court neither compelled the unwilling levir to marry the aggrieved widow nor ordererd compensation for her. If he were willing to undergo a degrading unshoeing ceremony, that ended the affair.

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41) Lev. 18:15-16. The listing of these two prohibitions in successive verses may not be entirely coincidence.

42) Lev. 20:12, 21. Raymond WESTBROOK ("The Law of the Biblical Levirate", pp. 65-87) has cogently argued that in the biblical context, levirate comes into play only when the father's estate had not yet been divided and therefore refers to a highly exceptional situation which may not be totally incompatible with the priestly material. This conclusion runs counter to the utter absoluteness of P's prohibition.

43) Lev. 21:14. Ekeziel (44:22) would extend the prohibition to the entire priesthood.

44) Gen. 38, Dt. 25:5-10, Ruth 4:1-11.

The presence of these legal exemptions imply that before the priestly document was compiled, levirate was already a declining institution, and by the time of the priestly writer, it had become so irrelevant that the incest taboo overwhelmed it.

The rules forbidding a man to marry a woman and then marry or make a concubine of her mother, daughter or sister prevented the unseemliness of a man moving about from one member of a woman's family to another, and in the spirit of reform, ended an abuse in the practice of polygamy. P did not wish any dilution of affection or loyalty between or among sisters and between mother and daughter to be attributable to forcing these women to compete for the attention of the same man.

P's interest in improving women's status in the family is not confined to the incest rules and should be viewed as part of a larger program of concern for women's needs not dissimilar to what we have encountered in Hammurapi's laws. Indeed, in his treatment of vows and heiresses, the author moves from concern for holiness and ritual purity to simple fairness.

While the rules governing vows in Num. 30 make clear that a woman who is not yet married is under the control and jurisdiction of her father and in true patriarchal fashion passes upon marriage to her husband's control, these same rules require that this authority is not to be wielded capriciously or arbitrarily. A father could nullify a daughter's vow only when he heard of it. The same rule applied to a husband with respect to his wife's ante- or postnuptial vows. The rules then explicitly state that no one had the authority to nullify the vows of a widow or a divorcee, thus indicating that such a woman is *suo iure*.

A clear example of reform occurs in the priestly writer's recounting of the case of Zelophehad's daughters, who demanded the right to inherit their father's estate (45). A recurring theme of Old Testament narrative is the portrayal of women as connivers and deceivers on behalf of their sons to get inheritances that they would not ordinarily be entitled to, but in no case were these women or any other women in their families regarded as potential heiresses. P introduced a reform, attributed to Moses, whereby daughters could inherit if there were no sons, the existence of collateral male relatives notwithstanding.

## Conclusions

In the earlier stages of a society in the ancient Near East, incest was literally an unspeakable offence, and hence at these early stages, little if anything of the crime was written into law. As time went on, the interplay of taboo, reform and economics necessitated some specificity as to what relatives would be prohibited. But even then, comprehensive tables of so-called prohibited degrees were never compiled, because the relative that was permitted could, under certain circumstances, be prohibited. Within this general framework, the fragmentary evidence we have indicates that sexual intercourse with a member of a man's immediate or nuclear family was always unequivocally condemned. With the exception of the absolute character of the moral injunctions to purity found in the Holiness Code, the rules

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45) Num. 27:1-11.

seem to be more ambivalent with regard to relatives by marriage. When the interests of an extended family or clan dictate the retention of a laborer or childbearer, or if the desire or obligation to support a widow along with any children she may have is strong, the incest bar may not extend beyond the lifetime of the husband, thus yielding rules of incest that are delimited as much by time and circumstance as by family relationship *per se*. The rules may also make distinctions between marriage and casual sex between or among relatives that may be exploitive. The spiritual pollution that occurs as a result of incest had to be dealt with, of course, but the penalties, some of them very brutal and severe, seem more concerned with demonstrating community outrage and preventing recidivism.