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Women's Offences and Biblical Law

The Books of Genesis through 2 Kings contain bodies of laws lodged at different points in a body of literature which recounts legends about the origins and history of the people of Israel. There is a very interesting reason for this intertwining of law and legend. The fictional lawgiver and prophet Moses formulated his laws after reflecting on the past, present, and future problems of his people. Moses was aware of these problems because he "knew" the history of his people that is recounted in the Books of Genesis through to the end of the Book of Kings, including events that occurred long after he died. The Pentateuch, the first five books of the Bible, is a document about origins. It incorporates bodies of law because their contents are to be thought of as going back to the beginnings of the nation Israel. 1

When constructing his rules from the history, Moses mainly focused on male behaviour.¹⁾ 2

He did not, however, neglect female conduct. For example, he formulated rules based on almost every instance of wrongdoing by women in the Book of Genesis.²⁾ He addressed the rules to males so that they do not engage in equivalent or related wrongdoing. Here are some illustrations.³⁾ 3

Lot's daughters' sexual intercourse with their father prompted a rule prohibiting a son from having intercourse with his mother (Gen. 19.30-38; Lev. 18.7). Sarah's frivolous response when she hears that, resuming menstruation, she will have sexual pleasure inspired the formulation of a rule prohibiting a man from sexual intercourse during a woman's menstrual cycle (Gen. 18.9-15; Lev. 18.19). Sarah's letting a foreign king think that she is unmarried when she is in fact still Abraham's wife prompted a prohibition against adultery (Genesis 20; Deut. 22.22). The incident also inspired the formulation of a rule, unique in world legal literature, prohibiting the renovation of a marriage (Deut. 24:1-4).⁴⁾ 4

Rebekah's exploiting Isaac's blindness in order to have him give Jacob the primary blessing led to the construction of the rule against putting a stumbling block before the blind (Genesis 27; Lev. 19.14). Her theft of her father's household gods contributed to the formulation of the rule against stealing (Gen. 31.34, 35; Lev. 19.11). The rivalry between the two sisters Rachel and Leah when they are both wives of Jacob produced a rule prohibiting a man from marrying two sisters while each is alive (Gen. 30.1-24; Lev. 18.18). Tamar's unions with the sons of Judah and then with Judah himself prompted a rule prohibiting a man from marrying a woman and her mother (Genesis 38; Lev. 20.14). Tamar's act of prostitution in order to acquire a child inspired a rule prohibiting a man's involvement with a prostitute (Genesis 38; Deut. 22.11). Because Tamar is described as a cult prostitute, the Levitical lawgiver prohibited an Israelite male from giving his seed to the Canaanite god Molech in whose service 5

cult prostitutes performed, and to whom their children were sacrificed (Genesis 38; Lev. 20.2-5). Tamar's act is on behalf of her dead husband. The lawgiver prohibited an Israelite from consulting familiar spirits and mediums, that is, those who are expert at communicating with the dead (Genesis 38; Lev. 19.31, 20.6; 1 Sam. 28.3, 9; Isa. 8.19; 19.3; 29.4; 2 Kgs 21.6; 23.24; 1 Chron. 10.13).⁵⁾ Potiphar's wife's attempted seduction of the bondman Joseph procured a rule about a man's seduction of a bondwoman for whom a marriage has been arranged (Genesis 39; Lev. 19.20-22).

We may be dealing with a feature found in the Book of Proverbs: the sages warn young men about how the enticements of women will deflect them from the business of preparing themselves for public life.⁶⁾ Bad behaviour by women serves to instruct men to avoid pitfalls in their own conduct. There are substantial links between biblical legal material and wisdom instruction and the laws may share this concern about male-female relations. Nor should we minimize the concern. However one-sided and narrow the attitude, there is the recognition that the relation between the sexes constitutes the most vital aspect of social life. Scholarly legal literature has recently looked for the first time at *Romaniya*, the laws of the Gypsies.⁷⁾

The Gypsies or Roma consider the human body, not abstract rules of law, to be the source of their laws. Their ideas about sexuality, procreation, and marriage are fundamental notions around which they organize their legal system.⁸⁾ There is an appearance of male dominance, but in actuality the power of women to curse and to pollute, in particular, Gypsy men, turns out to be a decisive factor in the working of the system.⁹⁾ The women are the guardians of the law and communicate to their offspring from early infancy the taboos associated with the human body.¹⁰⁾

The focus on negative and not on positive aspects of women's conduct in biblical literature reflects a universal phenomenon, one that is especially noticeable in early law codes and in the development of language.¹¹⁾ The remarkable receive attention and the unremarkable go unnoticed. Only once in the Book of Genesis do we learn that a mother loves her child and that example only comes up because the information is necessary to set the scene for some dramatic developments. Rebekah loves Jacob and Isaac loves Esau (Gen. 25.28), comments that introduce the story of how Rebekah will act against her husband in setting up Jacob to have the favoured position in the family. The history and legends that are recounted constitute a Zerrspiegel, 'a twisting mirror' of reality. The large becomes small and the small becomes large.

Many errors flow from a failure to appreciate this topsy-turvy depiction of reality. Progressively minded scholars have thought that the famous formula, 'life for life, eye for eye, tooth for tooth, hand for hand, and foot for foot', existed to curb the limitless vengeance to which ancient biblical society supposedly resorted at some stage in history. The authorities introduced the formula, so the claim is, in order to have judges declare that there should be just deserts for an offence, an eye for an eye, but no more. The sources give no hint of such a view. The alleged uncontrolled violence those modern scholars attribute to ancient societies

comes from their assumption that unending vengeance is the norm.¹²⁾ It is a false assumption. There is the failure to appreciate that the reason why ancient sources record so many violent events is precisely because they stood out, were even exceptional. There would have been, no doubt, violence enough but on a scale vastly below that of, for example, the twentieth century. The historian Charles Tilly calculates that in the 18th century 50 persons per million of population died in wars, in the 19th century it was 60 persons per million, and in this century it is 460 persons per million.¹³⁾ In assessing the offences by women described in the Book of Genesis, it is crucial for a modern reader to bear in mind that, aside from the problem of male bias, the narrator records the irregular, not the regular.

The biblical lawgiver focused not just on offences by women in the Book of Genesis, but also on those by males. In terms of his procedure there is in fact nothing especially idiosyncratic about his focus on female offences. Nonetheless, I know of no example where a male offence in the legends results in the formulation of a rule that prohibited a corresponding female offence.¹⁴⁾ The homosexuality of the Sodomites prompted a rule against male homosexuality (Gen. 19.1-11; Lev. 18.22). There is no rule putting down the female equivalent. Yet the next rule prohibits both male and female intercourse with animals (Lev. 18.23). Despite appearances, this is not an example where a male offence prompted a rule against its female equivalent. The reason for the inclusion of both sexes is that the lawgiver took up the issue from the story of Dinah in Genesis 34. Shechem is the son of the Ass, Hamor (in Hebrew), and he seduces Dinah, a daughter of Israel. The metaphorical element in the story has been used by the lawgiver to raise the topic of bestiality. The condemnation of the woman in the rule is because Dinah is held culpable for initiating a visit to the undesirable 'daughters of the land' (Gen. 34.1). In mixing with the Canaanite group she is behaving loosely and inviting the attention of the sons of the 'Ass'.¹⁵⁾ Contrary to a common perception, there are progressive features in the presentation of those biblical rules that cite women's offences. The lawgiver's reflection on Sarah's role in having the foreign ruler Abimelech think that she is Abraham's sister and not his wife furnishes an illustration (Genesis 20). The narrative draws no attention to Sarah's culpability for what happens. Abimelech complains solely about his fellow male's, Abraham's, deceit. That is insulting to Sarah because she is treated as a nonperson. When the lawgiver formulated his adultery rule in Deut. 22.22 he spelled out, unnecessarily for the drafting of a rule on the subject, the culpability of both the man and the woman for the offence: 'If a man be found lying with a woman married to a husband, even both of them shall die, the man that lay with the woman, and the woman'. A rule stating, 'Whoever commits adultery shall be put to death', would have been sufficient. The explanation for the redundant language is that whereas Abimelech is judged to be adulterous in the narrative, but Sarah not, at least not explicitly, the lawgiver brought out her culpability too. In this light the law confers personhood on Sarah. However much the death sentence might arouse our intuitive opposition, the harshness of the rule should not conceal this advance. It is the price society typically exacts when conferring a benefit.¹⁶⁾ We should not underestimate the sophisticated nature of both the narrative incidents and the rules that were derived from them. Consider the

incident when Lot's daughters seduce their father.¹⁷⁾ Critics do not realize that the incident represents a mirroring action that pays back Lot for his previous treatment of his daughters.¹⁸⁾ Recall that when the males of Sodom seek to violate Lot's male guests Lot offers them his two daughters instead. The narrator records the later incident about the daughter's violation of their father because he is intent on showing that Lot receives comparable abuse at their hands.

The matter is even more complex. Each incident revolves around the dilemma of two conflicting demands. Lot opts for the need to protect his guests at the expense of his daughter's honour. His daughters, in turn, opt for the need to continue a family line at the expense of their father's honour. The role of blindness highlights the link between the two episodes. Physical blindness afflicts the male inhabitants of Sodom in order to aid Lot in preventing the sexual abuse of his guests. This is a positive outcome. Lot's daughters, in turn, make their father blind drunk in order to aid them in their sexual abuse of him--which leads to the positive outcome of offspring to perpetuate a line. The notion that drink blinds the drinker is well brought out in Prov. 23.29-35. 11

Frequently in the Bible an incident serves to convey what the storyteller thinks is heaven's retribution for what happens in a previous incident. As a result it is often difficult to recognize the crucial distinction between an offence and a punishment.¹⁹⁾ What the daughters do to Lot, their incestuous seduction, is commonly seen as an offence. Viewed in its proper context, however, their conduct constitutes precise retribution for their father's offer of them to the males of Sodom. 12

On the one hand, Lot's offence duly receives a sanction. Justice is served. On the other hand, there is a glaring deficiency in the quality of the justice. The demands of religion conflict with those of earthly justice. Human courts lack the means to deal with Lot's misdeed. From a strictly juridical viewpoint there are problems of defining the offence, furnishing proof, weighing up conflicting values, and the like. Free of such constraints the religious mind believes in a balancing of accounts and proceeds to inflict a mirroring penalty. The profoundly unsatisfactory result is that heaven's justice treats people, Lot's daughters in this instance, as mere tools to accomplish its aims. The mechanistic factor shows up also in the fact that the daughters are nameless. They are not so much persons as carriers of ideas necessary to construct an aetiological myth. 13

Similar issues and problems show up in a modern guise. As John Noonan points out, the resort by contemporary human courts to abstract rules in the resolution of disputes also minimizes personal factors, even removing them altogether.²⁰⁾ The impersonal nature of justice is, in fact, proverbial. The Book of Common Prayer has justice administered 'indifferently'. In *A Vindication of Natural Society* Edmund Burke says of human laws that 'where mystery begins, justice ends' (as truly as, he adds, 'where mystery begins, religion ends'). Shakespeare speaks of this 'evenhanded justice' (MacBeth 1.7.10). Four of the central values in Judaism, Wisdom, the Sabbath, the Shekhinah, and the Torah, are feminine abstract 14

nouns and are often thought of in feminine terms. In much of the religion, however, real women have a secondary role. It has been argued that liberal social-contract theory, in particular the contribution of the philosopher John Rawls, produces sexual inequality by resorting to abstract and desexed players in discussing the issues.²¹⁾

In defense of religion we can note that theological beliefs often reveal right values and in real life can have some impact on changing regrettable attitudes and practices. But these same beliefs may also show serious shortcomings as in the example of Lot's daughters where what passes for justice does not measure up to elementary, earthly standards. To be sure, religious beliefs are much more complicated than I have just indicated. The belief, for example, that there is ultimate sorting out from above has its analogue in an ever present aspect of human conduct, the workings of conscience. There may even be merit in Freud's claim that in a hidden, subtle manner we, like Lot, pay ourselves back in mirroring fashion for wrongs we commit.²²⁾ 15

Another biblical narrative that deserves the closest scrutiny is the story of Tamar, one of the most multifaceted in the Bible. From our perspective she takes an honoured place in the pantheon of early heroines of civil disobedience. She belongs with, among other heroines, Eve (striking the flag of the mind by defying a hostile god who is opposed to progress), Rachel and Leah (opposing their father to advance the treatment of daughters), the Hebrew midwives (furthering life by defying a governmental decree), Vashti (taking a stand on a woman's dignity), and, yes, Balaam's she-donkey (defying a master to save him from himself).²³⁾ Tamar defies the authority of the male head of household and acts in a higher cause. About to be burned for her offence, she produces evidence that the tyrant, Judah, is more culpable than she. Fortunately for her, he recognizes the justice of her cause. Some fourteen biblical laws, I reckon, come from reflection on her story.²⁴⁾ 16

The narrator's aim in relaying Tamar's story in the context of the Book of Genesis is not in fact to affirm her heroism. Rather, it is to convey the notion that Judah receives retribution for causing his father Jacob to lose his favourite son, Joseph (whose story is told in the preceding narrative and is resumed again after Tamar's). Thus Judah learns what it is like to lose sons--first, Er, then Onan, and then, almost, the two sons in Tamar's womb. 17

Heaven's justice again presents a problem. Onan dies at the hands of God supposedly because he is disloyal to his dead brother, Er, for refusing to give Tamar conception. By any assessment, however, a penalty of death for such an offence is wholly inappropriate. The penalty, in fact, has been determined by the storyteller's aim to make Judah pay in kind, loss of a son, for causing the loss of Joseph.²⁵⁾ 18

In his levirate rule the Deuteronomic lawgiver took up from the story of Tamar the problem of a man like Onan who refuses to impregnate his dead brother's widow and raise a male child to him (Deut. 25.5-10).²⁶⁾ Opposed no doubt to the extreme punishment he found in the legend, the lawgiver sought instead to devise a more apt penalty for an offence like Onan's. In working out a sanction the lawgiver has the widow play a remarkable role. She publicly 19

disgraces her brother-in-law by likening him to Onan. This is the meaning of the ceremony whereby she removes his shoe from his foot and spits in his face. The removal symbolizes withdrawal from intercourse--similar to Onan's withdrawal from Tamar--and the spitting symbolizes the emission of seed--similar to Onan's action with his seed. It is the only rule in the Bible where the sanction consists of public disgrace.²⁷⁾

Linking shoes, feet, and saliva to sexuality, the symbolism that the biblical rule expresses is well illustrated in many cultures. In contemporary African-American circles an expression for sexual intercourse is 'to knock boots'.²⁸⁾ Whatever the origins of this particular expression, the notion of a shoe as symbolizing a woman's genitals is found at all times and places. Here are some other examples. 20

A Bedouin divorce ceremony has the man say, 'She was my slipper; I have cast her off'.²⁹⁾ Among the Manchus a bride gives gifts of shoes to her husband's brothers because as the younger brothers they will have the right of sexual congress with her. The shoes are decorated with the *lien hua*, in common speech the vulgar term for the female hymen.³⁰⁾ In nursery rhymes--often not originally composed for children--there are the following two examples: 'Cock a doodle doo!/My dame has lost her shoe/My mater's lost his fiddlestick/And knows not what to do', and 'There was an old woman who lived in a shoe/She had so many children she didn't know what to do'.³¹⁾ The slipper in the tale of Cinderella has similar symbolic meaning.³²⁾ Advice to a German bridegroom is '*Man muß nicht die Füße in fremde Schuhe stecken*' (he is not to go around sticking his feet into others' shoes; compare also the attachment of shoes or boots to the bridal car). 21

Feet (or a foot) also have the transferred sense of male (or female) genitals, for example, in the French expression, '*prendre son pied*'. Biblical literature provides many examples: Exod. 4.25; Deut. 28.57; 2 Sam. 11.8, 11; 2 Kgs 18.27=Isa. 36.12 (urine is 'water of the feet'); Isa. 7.20; Ezek. 16.25, and Jer. 2.25, 'Keep thy feet from going unshod and thy throat from thirst' (Israel as a lusty female animal that gives herself to any partner). 22

The Talmud (for example, Babylonian Niddah 16b) uses the term 'spittle' for semen. In the Egyptian creation myth Atum generated the cosmic pair Shu and Tefnut by masturbation, but in a variant tradition it is by spitting. The expression 'spitting image' (possibly 'spitten image' where spitten is the old past participle) may refer to the father's 'spitting' that results in a son so resembling him. 23

There are many parallels to the shaming of a person by likening him (or her) to a proverbial example in legend or history, for example, a Peeping Tom (from the story of Lady Godiva), a Jezebel (a loose woman among African Americans), and a Lolita (from Nabokov). In Hebrew the name Onan mockingly means 'The Virile One'. In the levirate rule the man acquires a new name, 'The Unshod One'. Like the name Onan the sobriquet is meant to convey his sexual disgrace. 24

As with Lot's daughters, the woman in the rule acts in a way that is outrageous by conventional standards. Normally a daughter does not have sexual relations with her father 25

and a woman does not ridicule a man's sexuality in public. In each instance, the action serves as a judgment on a male offence. For the purpose of drawing attention to a wrong, conduct that would put the woman beyond the pale in the normal way of things becomes the required behaviour--by heaven's inscrutable regime in one instance, by an earthly court in the other.³³⁾ In the example of the rule, the woman plays the role--a public one--of an insider within the male dominated legal culture.³⁴⁾ The powerful role given to the woman in the biblical rule is remarkably similar to the power exercised by women in Gypsy legal culture.³⁵⁾

Footnotes:

- 1 Biblical literature is a rich source for observations on the topic of gender. For example, the issue of gender discrimination seems to be the decisive consideration for interpreting the story of the woman taken in adultery in Jn 8.1-11. The story is representative of a trend in first century Judaism in which there is acute awareness of the unfairness of men's treatment of women. See David Daube, 'Biblical Landmarks in the Struggle for Women's Rights', in Calum Carmichael (ed.) *Collected Works of David Daube. New Testament Judaism* (Berkeley: Robbins Collection Publication, School of Law, University of California, 1997), II, pp. 329-42. In some biblical rules the masculine second person implicitly includes the man's wife, for example, in Deut. 12.18 (requirement to celebrate at the central sanctuary): 'Thou [masculine grammatical form], and thy son, and thy daughter, and thy manservant, and thy maidservant'. The Rabbis attributed special significance to discrepancy in gender in the grammar of the Hebrew Bible. In Philo's interpretation of the Greek Bible disagreement in gender is a basis for teaching. See Daube, *New Testament Judaism*, pp. 934, 953. For a Rabbinic view (linked to Gen. 1.26) that God possessed both male and female characteristics, see Calum Carmichael, *The Story of Creation. Its Origin and Its Interpretation in Philo and the Fourth Gospel* (Ithaca: Cornell University Press, 1996), pp. 99-114, especially notes 18 and 20, pp. 112, 114.
- 2 Included is Eve's eating of the tree of good and evil and her testimony under questioning for her offence. See Calum Carmichael, *The Spirit of Biblical Law* (Athens, Georgia: The University of Georgia Press, 1996), pp. 97, 98. One incident that does not give rise to a rule is Lot's wife's looking back on the cities of Sodom and Gomorrah (Gen. 19.26), but I am not sure if her act can be constructed as wrongful, for example, along the lines of Ham's looking upon his father's nakedness (Gen. 9.22). In speaking of wrongdoing by the women in the Book of Genesis I am focusing on the perspective of the lawgiver. The narrator's estimate of an act may have been different.
- 3 For a detailed discussion, see Calum Carmichael, *Law, Legend, and Incest in the Bible: Leviticus 18-20* (Ithaca: Cornell University Press, 1997).
- 4 See Calum Carmichael and David Daube, *The Return of the Divorcee, Inaugural Jewish Law Fellowship Lecture* (Oxford: Oxford Centre for Postgraduate Hebrew Studies, 1993).
- 5 Just as the Genesis narratives anticipate developments long after the incidents described in them--this feature of the literature is well recognized by critics--so the laws focus on such later developments. Thus it is especially in monarchical times that one comes upon familiar spirits and mediums. Tamar's dealing with the dead foreshadows what is to come later.
- 6 On Wisdom (*okhmah*) as the most animated of the feminized spiritual qualities in Judaism (the Shekhinah [the Divine Presence], the Sabbath, the Torah), see David Daube, 'Addendum to God or Goddess', *Rechtshistorisches Journal* 10 (1991), pp. 365-68. The Qumran Psalms Scroll on Sir. 51.13 ff. eroticizes the quest for her to an extraordinary degree.
- 7 See Walter O. Weyrauch and Maureen A. Bell, 'Autonomous Lawmaking: The Case of the "Gypsies"', *Yale Law Journal* 103 (1993) pp. 323-99.
- 8 Compare the comment on the contemporary American scene by the President of the Institute for American Values, 'The heart of the values debate is what we believe and how we act regarding sexuality, procreation and marriage, especially the connection of those three or the growing disconnection' (Los Angeles Times Dec. 11, 1996).
- 9 It is perhaps misleading to use the English word 'to pollute' to refer to the woman's power. In regard to menstruation, for example, anthropological studies indicate that 'menstruation can be seen as a manifestation of creative power

because it signals that conception and birth are possible'. See Walter O. Weyrauch, 'Oral Legal Traditions of Gypsies and Some American Equivalents', *American Journal of Comparative Law* 45 (1997), p. 429.

- 10 The link between the human body and a legal system is less strange than might appear. One instance of the impact of the body is the role of appearance in court proceedings. It is well recognized that sentences tend to be harsher for a convicted person whose appearance is disheveled than for someone whose appearance is presentable, just as shoplifters who look scruffy or who have a racial make-up different from the majority in the culture receive more attention from law enforcement personnel. One even comes upon the extraordinary situation in a Florida court where a special room contains the cast off suits of judges for the accused to wear in court (Weyrauch, 'Oral Legal Traditions', p. 416 n. 32). Noting that most disputes do not in fact come to court, Weyrauch contends that the American legal system is essentially a bargaining system rather than one based upon cases and abstract norms. Even at this level of dispute resolution appearances can play a crucial role. When the two lawyers representing the disputing parties sit down together their interaction at the level of appearance will be a factor in the dispute's outcome. See Weyrauch, 'Aspiration and Reality in American Law', in Alan Watson (ed.), *Law, Morality, and Religion: Global Perspectives*, (Berkeley: Robbins Collection Publication, School of Law, University of California, 1996), pp. 217-26. To look at a person can often tell one more than other forms of documentation as to character, potentialities, and the like. David Daube once told me that, when as Nuncio the later Pius XII visited Freiburg in the late 1920s, Daube was so impressed by his bearing that later he had no difficulty mounting a reasoned defense against those who condemned Pius for his stance vis-à-vis Hitler (unpublished note on file with author). The State of Missouri had a statue (Mo. Ann. Stat. Par. 536.240 (1953) prohibiting white persons from marrying persons having one-eighth or more of Negro blood and declaring that 'the jury trying any such case may determine the proportion of Negro blood in any party to such marriage from the appearance of such person.'
- 11 See David Daube, 'The Contrariness of Speech and Polytheism', *Journal of Law and Religion* 11 (1995), pp. 1601-05; 'The Self-Understood in Legal History', *Juridical Review* 85 (1973), pp. 126-134; also in German, 'Das Selbstverständliche in der Rechtsgeschichte', *Zeitschrift der Savigny-Stiftung* 90 (1973), pp. 1-13.
- 12 For a sophisticated discussion of the role of vengeance to resolve disputes in some societies, see W.I. Miller, 'Choosing the Avenger: Some Aspects of the Bloodfeud in Medieval Iceland and England,' *Law and History Review* 1 (1983), pp. 159-78.
- 13 See Calum Carmichael, *The Spirit of Biblical Law*, pp. 105-08. For Tilly's figures, see Walter LaFeber, 'The End of the Cold War: the Global Context', Bookpress (Ithaca, October, 1992), p. 2.
- 14 I shall turn shortly to the much more complicated phenomenon where a male's offence against a women (Lot's offence against his daughters) result in what appears to be a woman's offence against a man but in fact is something quite different.
- 15 The role of metaphor in both the narratives and the rules is a rich field for research. In the narratives an individual person may in fact represent a tribal or ethnic group, for example, Lot's two daughters produce the first Ammonite and the first Moabite, and Shechem may represent the Shechemites whose Canaanite religion seduces the Israelites. Eve and Adam personify womankind and mankind. The essence of a story is sometimes captured in a name: 'Jacob' is a 'supplanter' who wins out over his brother, Esau, and 'Isaac' distills the 'laughter' of his parents at the idea of his conception. Jacob speaks of his family as the House of the Ox (Gen. 49.6) when referring back to Hamor (Ass) and his collective. The proverb 'A whip for the horse, a bridle for the ass, and a rod for the fool's back' (Prov. 26.3) illustrates how easily an author moves back and forth between the animal and human world. The forgotten sheaf of the Deuteronomic rule about giving grain to the hungry directs attention to Joseph as the personified sheaf of grain to whom his brothers bow down in his dream, and to whom eventually in real life they bow down when he relieves them of starvation (Gen. 37.7.; Deut. 24.19-22). Between his dream and its fulfillment Joseph spends time in prison where he successfully interprets the dreams of the butler and baker. He appeals to the former to remember him after his release from prison. The butler forgets but then remembers him when the pharaoh's dreams about the provision of grain need interpreting. (Neither the Old or New Testament records a dream by an Israelite/Jewish woman). The combining of storytelling, personification, and, latterly, legal formulation is a highly sophisticated art. The laws themselves on occasion resort to figurative language, for example, the term 'dog' describes the homosexual (Deut. 23.18). On the personification of the piece of unleavened bread, the *aphikoman*, at the Passover Eve service--it is the piece of bread Jesus chooses to identify himself with--see Deborah Carmichael, 'David Daube on the Eucharist and the Passover Seder,' Craig A. Evans and Stanley E. Porter (eds.), *New Testament Backgrounds* (Sheffield: Sheffield Academic Press, 1997), pp. 89-108. Howard Eilberg-Schwartz, *The Savage in Judaism: An Anthropology of Israelite Religion and Ancient Judaism* (Bloomington: The University of Indiana Press, 1990), attributes an entire cultural conceptual world to figurative language in biblical legal discourse.
- 16 On this point see David Daube, *New Testament Judaism*, pp. 317-20.

- 17 They are not given names because the story is an aetiological myth that attempts to explain how the national groups, the Ammonites and the Moabites, come into existence.
- 18 Using the story to derive hypothetical cases, the lawgiver himself chooses to treat the incident as wrongdoing in his incest rule in Lev. 18.7.
- 19 For a philosophical critique of actions that the law requires but are nonetheless wrong, see Hans Kelsen, *General Theory of Law and State* (New York: Russell and Russell, 1945), p. 21.
- 20 See John Noonan, *Persons and Masks of the Law: Cardozo, Holmes, Jefferson, and Whyte as Makers of the Masks* (Cambridge, Ma.: Harvard University Press, 1976). Rules of law as represented in printed sources tend to become increasingly abstract. See Weyrauch and Bell, 'Autonomous Lawmaking,' p. 378, and Leopold J. Pospisil, *Anthropology of Law: A Comparative Theory* (New York: Harper and Row, 1971), pp. 20-37.
- 21 See Carole Pateman, *The Sexual Contract* (Stanford: Stanford University Press, 1988), pp. 41-43; also Linda R. Hirshman, 'Is the Original Position Inherently Male-Superior', *Columbia Law Review* 94 (1994), pp. 1860-81.
- 22 See Sigmund Freud, *The Psychopathology of Everyday Life* (London: International Psycho-Analytical Press, 1966), pp. 122-26. Just as we can never know much or anything about the truth of religious claims, so claims about psychological findings justifiably evoke scepticism because, au fond, we are dealing with the unknowable, for example, the world of early childhood, the 'unconscious', and the like.
- 23 See David Daube, *Civil Disobedience in Antiquity* (Edinburgh: Edinburgh University Press, 1972), pp. 5-16, 50, 61, 62, 65-67; Calum Carmichael, 'The Paradise Myth: Interpreting without Jewish and Christian Spectacles', in Paul Morris and Deborah Sawyer (eds.), *A Walk Through the Garden* (Sheffield: Academic Press, 1992), pp. 47-50, 60.
- 24 See my study in *Law and Incest of the rules that the Levitical lawgiver derives from Genesis 38*.
- 25 That Joseph in fact is not dead but sold abroad to another country, Egypt, does not minimize the brothers' offence, of which Judah is the instigator and hence more culpable than the others. In antiquity, as the Roman *poena capitalis* illustrates, death can take the form of exilia or slavery abroad.
- 26 The law reads, 'If brothers dwell together, and one of them dies and has no son, the wife of the dead shall not be married outside the family to a stranger; her husband's brother shall go in to her, and take her as his wife, and perform the duty of a husband's brother to her. And the first son whom she bears shall succeed to the name of his brother who is dead, that his name may not be blotted out of Israel. And if the man does not wish to take his brother's wife, then his brother's wife shall go up to the gate to the elders, and say, "My husband's brother refuses to perpetuate his brother's name in Israel; he will not perform the duty of a husband's brother to me". Then the elders of his city shall call him, and speak to him: and if he persists, saying, "I do not wish to take her", then his brother's wife shall go up to him in the presence of the elders, and pull his sandal off his foot, and spit in his face; and she shall answer and say, "So shall it be done to the man who does not build up his brother's house". And the name of his house shall be called in Israel, The house of him that had his sandal pulled off.
- 27 Shaming penalties, coming into vogue in the contemporary criminal law system in the United States, are linked to the relation between the sexes, either directly (the publication of the names of a prostitute's clients) or indirectly (if it is true that the fear of public exposure for wrongdoing is ultimately grounded in the human aversion to engaging in sexual intercourse in public). For recent developments in the United States, see Dan M. Kahan, 'What do Alternative Sanctions Mean', *University of Chicago Law Review* 63 (1996), pp. 591-653.
- 28 See Geneva Smitherman, *Black Talk--Words and Phrases from the Hood to the Amen Corner* (New York: Houghton Mifflin, 1994), p. 151. Her explanation that the meaning is 'possibly from taking (knocking) off one's lover's boots before engaging in sex' is, I think, wrong.
- 29 See W. Robertson Smith, *Kinship and Marriage in Early Arabia* (1903), p. 105; G. W. Freytag, *Lexicon arabico-latinum* (1837) lists '*coniunx viri*' (wife of the husband) as one of the meanings of *na'l*, 'shoe'.
- 30 See R. D. Jamieson, *Three Lectures on Chinese Folklore* (Peiping: 1932), p. 75.
- 31 On the more common phenomenon of the transformation of bawdy folktales for adults into sanitized versions suitable for children, see Maria Tatar's major study, *Off With Their Heads. Fairytales and the Culture of Childhood* (Princeton: Princeton University Press, 1992).

- 32 See Bruno Bettelheim, *The Uses of Enchantment: the Meaning and Importance of Fairy Tales* (New York: Kopf, 1976), pp. 264-77.
- 33 Prescribed obscene public behaviour by women has a long and interesting history. For some aspects see E. E. Evans-Pritchard, 'Some Collective Expressions of Obscenity in Africa', in *The Position of Women in Primitive Societies and Other Essays in Social Anthropology* (London: Faber and Faber, 1965) pp. 76-101; Victor Turner, *The Ritual Process* (Chicago: Aldine Press, 1969), pp. 75-93. A contemporary example would be the snipping of men's ties by women at the Fasching festival in Munich.
- 34 Deborah Sawyer's statement may also be pertinent: 'Examples of women functioning effectively in the public realm in the ancient world are manifestations of an alternative understanding of gender'. See *Women and Religion in the First Christian Centuries* (London: Routledge, 1996), pp. 137, 138.
- 35 See my discussion in, 'Jewish Law and Gypsy Law', *American Journal of Comparative Law* 45 (1997), pp. 284-88. Like the Gypsies in regard to their religious beliefs, contemporary feminist theologians appeal to other religions when affirming their beliefs. See in this volume, pp. 000. In affirming Romani religious beliefs, Gypsy women have a unique role. Consider, for example, how ideas from Christianity and Hinduism come together in the annual festivities at Saintes-Maries-de-la Mer in Southern France to honour St. Sarah, the patron saint of the Gypsies. Although she is closely related to the Holy Family, in effect she acts the part of the goddess Durga, also called Kali, who is celebrated for her powers of creation, sickness, and death in the annual processions in India (the place of origin of the Gypsies some thousand years ago). See W. R. Rishi, *Roma: The Panjabi Emigrants in Europe, Central and Middle Asia, the USSR and the Americas* (Patiali: Punjabi University, 1976), pp. 58-64; also Weyrauch's comments in "Oral Legal Traditions", p. 428.