A COMPARATIVE STUDY OF INHERTANCE LAW AMONG THE JEWS AND YORUBA PEOPLE OF SOUTH WEST NIGERIA

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Abstract

A casual interrogation of the Old Testament would readily reveal the consequences of a patriarchal society, which simultaneously marginalises the voices of those who are poor and needy, women, children, bereaved, slaves, foreigners, etc. This marginalisation is frequently excused by the argument that it follows God's instructions on how a society ought to run. It is possible to characterise this as a theological-ethical justification for patriarchy. Nevertheless, it is apt to add that laws on inheritance in the Old Testament were influenced by the laws and practices of their surrounding neighbours, hence, the patriarchal suppression of those at the margins. It is this challenge that this paper interrogated within the purview of the Yoruba people of Nigeria's customary laws. The paper employed the historical-critical method of a diachronic approach to interrogate this challenge. The paper concluded and recommended that while the cultural patterns of both the Ancient Near East and the Old Testament have global appeal, it will be a great disservice to these cultures if contemporary society rigidly appropriates their laws on inheritance without taking into consideration the cultural and behavioural realities of the contemporary society. Each person of every generation should re-read these laws and properly contextualise them for proper applicability.

Keywords: Inheritance, Law, Old Testament, Yoruba People, Southwest, Nigeria.

Introduction

A major portion of the Old Testament revolves around the concepts of property, property transfer, and inheritance. There are numerous syntactical ways in which the Hebrew language itself expresses ownership. The well-known phrases "my boots, my puppy, my child, my wife, my country, my God" demonstrate how the genitive relation, like in many languages, can cover a wide range of meanings, from absolute possession to ultimate subjection, even if many of these forms often allude to ownership or a related notion. Therefore, more context-based clarification is required in each circumstance.

Furthermore, despite what one might assume from reading standard annotations and Bible dictionary articles, the topic of inheritance in the Old Testament is more nuanced than it appears. There are about a hundred pertinent biblical texts, but they don't all make sense. Leaving a lot of questions unanswered is necessary to take these texts seriously. All too frequently, commentators and annotators have tried to answer these kinds of questions by asserting things based on extremely dubious evidence.

According to Wells, (1987) land and other properties were thought to be a family's most valuable financial possession. Although inherited land and properties were special, they could be purchased and sold. In the ancient Near East, ownership of inherited land passed to the buyer permanently if a family sold it for the full price. In most cases, family members were permitted to redeem (repurchase) the land at the same or a lower price if the family sold it for less because of financial difficulties or the need to sell quickly. It was determined by society that it was necessary to allow families to retain their inheritance by means of a buy-back process.

A comprehensive picture of family law in ancient Israel is challenging to achieve because the Hebrew Bible contains a multitude of texts from various eras that could be utilised to reconstruct this legal system, but it is unclear if the principles and regulations in these texts operated concurrently. According to some texts, a man's sons from his wife or wives were his primary heirs. Concubines, slaves, and prostitutes' sons were excluded (Judges 11:2). Instead of receiving an inheritance share, daughters received a dowry; however, if their father had no sons, they might inherit their father's estate. In order to maintain all property within the clan, if they were, they were prohibited from getting married outside of their father's clan or extended family (Numbers 27:5-11, Number 36:5-9). Number 27:11 states that after daughters, the departed brothers came next, then his paternal uncles, and finally "the nearest kinsman of his clan."

After the father passed away, his heirs had two options: they could either split the estate up right away or hold onto it while they waited for a younger son to reach adulthood. There were particular regulations for brothers who owned an undivided estate. For instance, Deut 25:5–10 states that if a brother marries but passes away childless, another brother is to wed the widow in the hopes of bearing a son, who will then be entitled to the deceased brother's share.

Upon division, the father's estate was often divided into equal portions. Shares were likely assigned to individual heirs by casting lots. According to Deuteronomy 21:17, the other sons received one share each, while the oldest son usually received two. By a testament, a father may reassign the right to a double share to a younger son and name him the 'firstborn.' But if he was married to more than one woman and had previously made the decision to 'hate'- more likely, 'demote'—the mother of the oldest son by birth, he would not be able to do so. The oldest person in this situation was still considered the firstborn (Deuteronomy 21:15–17). Families who

experienced financial hardship and were forced to sell their inherited land or its properties were still able to redeem it.

However, inheritance issues vary greatly throughout the nation of Nigeria, where the Yoruba people are a constituent. Nigerian law is inherently pluralistic, which is reflected in the laws of succession and inheritance. In Nigeria, when someone passes away intestate, their customary law-that is, the customary law to which the deceased was subject-usually controls how his estate is divided. Additionally, customary inheritance differs amongst ethnic groups. There are issues with the group of individuals who should gain from an intestate succession and their share. Therefore, the purpose of this paper was to critically analyse the inheritance procedures of both the Yoruba people of Nigeria and the people of the Old Testament. The study addressed the different forms of discrimination and offered remedies and potential changes.

Conceptual Clarification

The legal concept of inheritance, also known as heritage, refers to the gifting or passing on of property that was not personally acquired but was instead possessed by a previous owner. The verbal roots *yrš, nḥl,* and *ḥlq* serve as the basis for the principal Hebrew equivalents of the English words inherit, inheritance, heritage, and heir. To these verbal roots may be added the nouns *gôrāl* (lot), *ḥebel* (allotted portion), and possibly even *segullâ* (private fortune). The root *yrš*, which appears roughly 256 times in the Masoretic Text (MT), specifically refers to succession in possession, whether by inheritance or conquest, and it is almost always used about immovable, like a house, city, or nation.

The Septuagint translators were occasionally obliged to employ Greek words in a sense more expansive than they had in the classical language due to the Hebrew roots' orientation toward the idea of stable possession. Greek terms *κληρονομέω* (inherit), *κληρονόμος* (heir), and *κληρονομία* (inheritance, heritage) were adopted by the translators to convey the ideas found in the Hebrew terms. However, the translators frequently added a meaning to the Greek terms beyond the traditional interpretation of property being transferred by last will or other legal disposition.

In the Old Testament, the transfer of patrimonial goods was typically governed by law or custom rather than by a last will and testament (2 Sm 17.23; 2 Kgs 20.1; Sir 14.15). The Bible contains very few verses that specifically address the laws of inheritance (Deuteronomy 21.15–17; Nm 27.1–11; 36.6–9). Nonetheless, these and other scriptures make clear that the eldest son was entitled to twice his father's wealth (Deuteronomy 21.17), that the sons of so-called concubines were not to inherit unless they were adopted as full-right sons (Genesis 25.56–57), and that illegitimate sons were not to inherit (Judges 11.1-2).

Unless there were no male heirs and the daughters married into the same clan, they were not entitled to inherit (Numbers 27.1–8; 36.1–9). If a widow had no male descendants, her deceased husband's property passed to his brothers or closest male relatives, and she returned to her father's house (Genesis 38.11; Leviticus 22.13). Alternatively, she stayed connected to her husband's family through a levirate marriage (Deuteronomy 25.5–10; Ruth 2.20; 3.12). Widows were not allowed to inherit, but they could act as guardians of their deceased husband's property until their sons reached adulthood (Ruth 4.9; 2 Kings 8.3–6). However, it appears that a childless widow could inherit her deceased husband's property toward the end of the Old Testament period (Judith 8.7).

Inheritance and Ancillary Matters in the Ancient Near East

Inheritance in Mesopotamia

For the obvious reason that each succeeding kingdom had fully functional legal systems, including laws and legal procedures that governed inheritance, inheritance in Mesopotamia was largely controlled by the operation of laws, although there were a few cases outside of the region where inheritance could be distributed in accordance with the will (šīmtu) of the deceased father. Mesopotamia saw a long and well-established legal history, spanning from the third millennium Laws of *Ur-Namma* and *Lipit-Ishtar* to the second millennium Laws of *Hammurabi, Eshnuna*, Middle Assyrian, to the first millennium New Babylonian Laws. All of these significant law collections contained laws pertaining to inheritance in addition to other legal documents including court decisions, adoption agreements, and marriage vows.

The Laws of *Ur-Namma* (ca. 2112-2095 BCE) on Inheritance

The third-millennium law collections of *Ur-Namma* contain no explicit laws about primogeniture. The closest trace of an inheritance law can be found in LU §5 (COS 2.153), which states:

> A male slave who marries a native woman must give birth to one male child and place that child in his father's estate, which includes the house, the wall, and other property. The child of the native woman will not be the master's property and will be forced into slavery.

It's possible that the proponents of these laws did not see the need to specify the widely accepted modern customs and practices if the Laws of *Ur-Namma* as they exist today are the only legal collections from the Ur III Dynasty (which is unlikely). Given that a native free woman would typically not marry a slave man, the situation described in the current clause may be one of those odd occurrences that required some guidance.

The birthplace of the "one male child" is not mentioned in the text. He could therefore be any of the slave's sons or the firstborn son. The second clause's exact meaning is unclear. It probably has to do with a slave master's child who is brought into his service inheriting rights to the master's estate. What exactly "the child who is placed in the service of his master" actually does, though, is unclear. It could be used to describe a child who serves their master at the master's home, farm, or other location, or it could be used to describe a child who fulfils a state service requirement on behalf of their master.

As the matter pertains to the master's inheritance and the requirement states that the child's mother must be a native (free) woman (though it is not impossible for her to be the master's daughter). The former is most likely true because a slave would always work for his master, whether or not he descended from him. Even with the dreaded system of slavery in place at the time, a law that grants a slave-worker a portion of his master's estate is undoubtedly a "good and gracious law."

A Sumerian court case on inheritance

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

The younger brother and the sons of his late older brother were involved in the aforementioned third-millennium court case. The matter was presented before the assembly of Nippur, the erstwhile Akkadian and Sumerian capital. In this case, his younger brother Anne-babdu filed a claim against his nephew Aabba-kalla, who was the son and heir of their late elder brother Ur-Suena, seeking additional shares. Ten years after the older brother's passing, the claim was made. The claim is based on the fact that Ur-Suena and his younger brother, Anne-babdu, split their father Enlil-mashsu's estate equally among themselves by lot while he was still living.

Since Ur-Suena is the older brother of the only two heirs mentioned, he would be the firstborn even though the text does not explicitly state that he is. It is possible that Ur-Suena, the elder brother, was given a significant additional share instead of being the principal heir, based on the division of the land by lot and the younger brother's claim of an additional share ten years later. It's also possible that Anne-babdu received less than what he was entitled to or that his father wished for him based on the last line, "in lieu of the respective inheritance shares not yet adjudicated according to the wish, (literally, heart) of Mullil-mashsu (Enlil-mashsu)."

The term "the heirs of Ur-Suena" also suggests that the estate of Aabba-kalla's late father Ur-Suena (the brother of Anne-babdu) has not yet been divided by him and his two brothers. Since Aabba-kalla was most likely the oldest brother, they most likely kept it as joint property under his administration. Why did Anne-babdu file the lawsuit against his nephews only ten years after the death of the elder brother? There is not a strong enough explanation in the text. It's possible that he deliberately bided his time until his older brother passed away to prevent new direct evidence against him. Alternatively, he might have done so out of respect for the deceased or because his estate had diminished by then and he did not want to revive his late older brother's memory too soon.

The royal court was convinced by Anne-babdu's argument, most likely because it proved that a portion of Aabba-kalla's estate and that of his two brothers belonged to both their uncle Anne-babdu and their father Ur-Suena. As a result, Aabba-kalla and his two brothers consented to donate silver and land as directed by the court to their uncle, the brother of their father.

The Laws of Lipit-Ishtar (1934-1924 BCE) on Inheritance

Inheritance rules were specifically mentioned in Ancient Near East texts around the start of the second millennium. However, there are indications of both systems, it is unclear if primogeniture or an equal distribution of inheritance among all the sons was the norm under the rules of Lipit-Ishtar. Some of the inheritance laws of Lipit-Ishtar were as follows:

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.

According to this law, the wife's father gave her a dowry, but only her own children would be eligible to inherit it (stepchildren are disqualified). The fact that the law does not specify the rights of the firstborn, the preference of sons over daughters, or the preference of the children of the first-ranking wife over those of the second (ranking) wife is an intriguing and noteworthy aspect of this paragraph. All children are equally eligible to inherit, including sons and girls (gender), the firstborn and his younger brothers (age), and the offspring of the first and second ranked wives (social strata). They would evenly split their father's estate.

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.

The social strata aspect of patriarchy is addressed by this statute. Offspring resulting from a coupling with a slave woman would not share the same inheritance as the offspring of the free woman-wife. It is possible to infer from this clause that the second wife of the previous clause is a free lady and not a slave woman. The freedom of their slave mother and themselves would be the greatest gift that could be given to the children of the slave lady. Nevertheless, not inheriting land and being a landless freeman is a considerably superior condition to being a slave. Lipit-Ishtar must have thought it was a just law for that reason, even if they were not allowed to inherit. The children of the slave woman were later granted legal heirship by the Laws of Hammurabi (see below), provided that their father declared them to be “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 addresses the patriarchal familial culture's age and social strata. The Laws of Hammurabi (COS 2.131) clauses §70 and §71 bear a great deal of similarity to this one, with the exception that in the later, the male entered into a union with his slave lady following the death of his first-ranking wife. The Laws of Lipit-Ishtar (cf. COS 2.154: LL §25) do not provide for the offspring of the slave woman to inherit the paternal estate in the preceding paragraph.

However, children born out of union with slave women might inherit the paternal estate under both the current provision of Lipit-Ishtar (COS 2.154: LL §26) and the Laws of Hammurabi (COS 2.131: LH §70). Under the Laws of Hammurabi, a child's father had to declare them "his children" in order for them to be eligible for inheritance if they were born into a union with a slave woman. The Laws of Lipit-Ishtar have no such provision.

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 makes it quite clear that, even in cases when a child is born out of wedlock, the legal successor will be the parent's own child (maybe a son or daughter), not their brothers or closest relatives. The main heir of a man who had multiple children born outside of marriage is not speculated in the text. They could decide to divide the inheritance equally or to share it equally but with some rights reserved for the eldest son or daughter. The final sentence, "the prostitute will not remain in the house with his first-ranking wife as long as his wife is alive," is an obvious example of patriarchy's social strata component.

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 moral law concerns a particular present to the son who is preferred. Who the preferred son is not made clear in this passage. The first-born son was probably the preferred son in the social and cultural context of the period. In the aforementioned paragraph, a son is granted a prerogative; nevertheless, the language does not specify which son is the favourite. Further validation is needed to determine whether or not this is proof of primogeniture.

The favoured son may be any of the many other sons or the son of the woman. There is evidence of the primogeniture tradition's violability if the preferred son is not the firstborn son. This scripture, along with others that address the topic of "the favoured son/child," refrains from speculating on what attributes a certain son to being the favoured son. The natural rationale for favouring the firstborn son would be his birth order as the father's firstborn and all the mythological, cultic, and cultural significance associated with the firstborn.

If the preferred son is not the firstborn son, the decision may be influenced by the son's bravery, strength, intelligence, and character as well as by the mother's standing in the family. In any case, even if the father's preferred son isn't the eldest, the other sons aren't allowed to argue against their father's choice to give him a unique present.

Properties and their Identification in the Old Testament

In addition to describing property as belonging to someone and hence being in a subordinate position, several Hebrew nouns also designate different categories of property in an absolute meaning, such as land, houses, servants, cattle, and gold. The most prominent of these words are listed here.

Nachalah: "inheritance, property, and possession" (224 instances). Although the word 'inheritance' or 'legacy' is typically translated as such in the KJV, it is actually mentioned only 45 times. Generally speaking, 'possession' is preferable, such as when Israel or the several tribes own Canaan, when the Lord owns Israel, when the Levites share in the Lord and the tithes, or when enemy nations possess Israel. 'Share' or 'interest' are sometimes suggested. Nouns that come from the verb *chalaq*, "to divide, share":

Cheleq (chalaq in Aramaic): "section, tract, area" (69 instances). This phrase usually refers to the distribution of property or booty, frequently given to God as the possession of his people; it can also be used to describe a person's life choice.

Chelqah: a precisely defined 'section' of land (23 instances). It is always applied to a field that is privately owned.

"(Assigned) possession" is *Achuzzah* (66 instances). It describes the long-term acquisition or transfer of property, typically land.

Osher: 'riches' (37 times). This phrase refers to having comparatively more wealth and belongings than other people.

Rekush: "goods, property" (28 times). This word (cf. rekesh, 'steed') invariably denotes moveable property, usually domesticated livestock.

Nouns with roots in *yarash*, which means "to have, inherit":

Yerusshah or *yereshah*- 'land' acquired by inheritance (15 instances). Normally, national possession of territory is meant by this word.

Morashah- 'possession' nine times. This term denotes national sovereignty over territory or populace.

Nouns that come from the verb *qanah*, "to obtain":

Miqnah: 'purchasing' (14 instances). This phrase can be used to describe the thing that was bought or the cost of the transaction; see *miqneh*, 'cattle.'

Qinyan—"acquirement" (10 instances). Property or things possessed by creation or purchase rights are referred to by this word.

Nouns that come from the verb *yathar*, "to stay over":

Yithron: "Benefit, advantage" (10 instances). Only in Ecclesiastes is this phrase used. It could be an excess of any benefit, advantage, or monetary gain.

Yithrah: two instances of 'riches.' The stolen treasure from Moab is mentioned in both verses.

Segullah- "property, possession" (8 instances). This term usually means that God owns Israel, but it can also mean that kings' treasures belong to God.

Nekasim—'riches' five times. This word describes the enormous wealth that rulers or armies have amassed.

Patriarchy and Inheritance in the Old Testament

Patriarchal as an adjective describes "male dominion over nearly every element of women's lives (political, economic, social, sexual, religious, etc.) in a given culture." Patriarchy is defined as a social structure in which men are superior and women are subordinate. Another name for it is an

androcentric society, one in which the views, experiences, wants, and interests of men are the focal point of power and values. “The power of the fathers; a familial, social, ideological, political system in which men - by force, direct coercion, or by ritual, tradition, law and language, traditions, etiquette, education, and the division of labour - choose what part women shall or must not play, and in which the female is everywhere subsumed beneath the male” is how Swart defines patriarchy more precisely from an African perspective.

Gerda Lerner defines patriarchy as “the manifestation and institutionalization of male control over women and children in the household and the spread of male dominance over women in society in general,” to put it in a more methodical, scientific, and sophisticated way. According to Lerner's definition, males are the heads of their households and have authority in all significant institutions of society, even though women are not completely without rights, influence, or resources. Generally speaking, women are denied access to this kind of power.

According to Laiu Fachhai, matriarchy, which is linked to small-scale farming, was more prevalent in primitive societies than patriarchy, which was linked to pastoral civilisation. They contend that among the Semites, matriarchal regimes were the primordial form of households. This concept holds that the distinguishing feature of a matriarchate is not the mother's exercise of authority (which is uncommon), but rather the fact that a child's ancestry can be traced back to the mother. Even the child's inheritance rights are determined by maternal descent; he is not seen as related to his father's family and is a member of his mother's family and social group.

The family is known as באבית “byt ab” (father’s house) in Hebrew. The phrase itself has a patriarchal meaning, referring to the fact that an Israelite father had power over his wives, children, and even his married sons’ wives, particularly if they shared a home. This authority in the past extended to the control of life and death. When Tamar, his daughter-in-law, was convicted of wrongdoing, Judah sentenced her to death (Gen 38:24). (Gen 24) Marriage was patrilocal. The wife moved into her husband's ba tyb after leaving her father's באבית “byt ab.” The husband was his wife’s ‘master’ [l[b] (2 Samuel 11:26).

The genealogies (Gen 10; 25:12–ff., 35:23–26, 36:9–43, etc.) were calculated using descents from patrilineage. Women were not included in inheritance or succession plans and were seldom ever mentioned. The paternal uncle was the closest relative in the collateral line (cf. Lev 25:49). Legal directives were given to men in the society, not to women. Oftentimes, generic discourse was expressed in masculine forms. In the writings of the Old Testament, men predominate as characters. In positions of authority (elders, rulers, judges, and civil and military authorities), men predominated. Almost all prophets in cultic life were men, and only men could become priests. These do in fact represent the workings of a patriarchal society. Therefore, it is entirely possible to assume that patriarchy prevailed in ancient Israel.

As a result, the Old Testament is portrayed as being incorrect for both its time and the present day in its support of and application of patriarchy. The Old Testament is therefore seen as being incompatible with the ideal egalitarian familial system, where gender equality, justice, and love would prevail, because of its patriarchal, male-dominated, and female-exploitative family structure.

It is appropriate to note that one of the main themes of the Old Testament is the problem of the ‘Firstborn.’ Primogeniture, often known as “first-born,” is the system of inheritance and succession in which the oldest son inherits the entire family’s estate and assumes headship, displacing younger brothers and sisters. In royal or dynastic succession, the oldest/firstborn son

is the one who takes the throne through a system known as primogeniture. Primogeniture was a common practice in many countries back then and is so now. Scholarly debates about whether primogeniture was accepted as normal in ancient Israel have occurred recently.

A thorough examination of several of the Old Testament passages pertaining to the firstborn would suggest that primogeniture was a widely accepted tradition in ancient Israel. Genealogies that were dominated by men were primarily calculated using the firstborn son's lineage. The firstborn son received two-thirds of the family's estate as the primary heir (Gen 25:29–34; Deut 21:17). According to 2 Chronicles 21:3, as well as Gen 25:5–6, 1 Sam 20:31, 1 Ki 2:15, 23–25, 2 Ki 3:27, and 2 Chr 21:16–22:1Prov 31:2, the eldest prince succeeded his father as king. Therefore, it can be said with certainty that primogeniture and patriarchy are related to the social structures of the Old Testament.

Steinberg and Westbrook, however, correctly place the daughter second to the son in the line of succession based on Numbers 27:8–11. The idea that daughters may inherit is important, even though this sequence would typically only be used in extreme circumstances. This break from the norm of inheritance laws and primogeniture could serve as a model for sexual equality in inheritance distribution. In order to show that the Israelite nation was founded on the Terah patrilineage, Steinberg correctly claims that the stories in Genesis 11:10–50:26 are concerned with the genealogical continuity and inheritance within the Terah patrilineage.

According to a theo-political ideological reading of the marriages of Abraham to Sarah and Hagar, Isaac to Rebekah, and Jacob to Rachel and Leah, the Israelite nation-building process included a programmatic political process that included emphasising the Terah patrilineage. One had to marry the right wife in the right way, that is, a woman of Terah patrilineal descent through the approval and arrangement of her parents, to be included in the Terah-Abraham patrilineage. It was the wrong mother and the wrong wife (wives) that Ishmael had.

Esau had the wrong wife, but the right mother. They were ineligible to be a part of the Terah-Abrahamic nation because of this. The mothers of Dan, Naphtali, Gad, and Asher were Leah's maidservant Zilpah, and Rachel's maidservant Bilhah, respectively. Dan, Naphtali, Gad, and Asher also had false mothers. However, they could then join the Terah-Abraham nation and benefit from its inheritable blessings if they were made sons of Rachel and Leah through surrogacy.

Yoruba and their Customary Law of Inheritance

The Yoruba people are found in southwest Nigeria and have also extended into Togo and the People's Republic of Benin (formerly Dahomey). The Yoruba have historically dominated the west bank of Nigeria, as far as historical memory allows. The Yoruba cities and kingdoms were "discovered" by Portuguese explorers in the fifteenth century, but cities like Ife and Benin, among others, had existed at their current locations for at least 500 years before the arrival of the Europeans. Awon, Ife, Igbomina, Kwara, Egaba, Ondo, Ilaje, Abeokuta, Ikale, Idanre, Ekiti, Ibadan, Owo Oyo, Shabe, Ijebu, Ijesha, Ketu, Anago, Egbado, Ifonyin, and Awon are among the sub-ethnic cultural groups that make up the roughly England-sized Yoruba homeland.

The Yoruba people's long-standing customs and practices have given rise to their native laws and customs, particularly those pertaining to inheritance and succession. It appears that the Yoruba customary law governing succession and inheritance is common to all of the Yoruba States that make up the union. That being said, there are still some distinctions between the various sub-ethno cultural groupings.

For instance, research has revealed that the Ijesha people have a bilineal mode of inheritance. It is patrilineal among the Ijebus, though women are allowed to inherit. Additionally, it is bilineal for the Ilaje and Idanre people of Ondo State. The brothers and sisters of the deceased (who were of full blood) were entitled to inherit property under Yoruba Native Law and Custom. But these days, it's more common to cut out the brothers and sisters and give the deceased's children the only inheritance rights. In certain cases, the rights of brothers and sisters are only restricted—they are not eliminated. In Abeokuta, for instance, they are still eligible for one-third (1/3) of the estate of the departed.

Nonetheless, a testator by Will may add sisters and brothers to his family. The family's founder, who has since passed away, left his property to his heirs as the family home in Sogbesan v. Adebiyi. He named one of his brothers as the head of the family in his will. According to the court, the testator meant for the word 'family' to refer to both his own offspring and their ancestors, as well as his siblings. This intention was made evident in the Will as a whole.

To avoid the ensuing disputes that frequently follow intestate, it has been noted that the majority of Yoruba people would rather pass away testate. Thus, intestacy is the norm under customary law. A nun-cupative will, sometimes referred to as a deathbed declaration, is the sole document under customary law that takes testate succession into account. Here, the deceased leaves assets to whoever they choose while still in the presence of witnesses on his or her deathbed.

There are several laws and regulations that apply in this situation. They are primarily governed by three elements, which will be discussed in the locus classicus case:

a) the type of marriage that was entered into;

b) the deceased's personal law; and

c) the law of the location where the property is located.

Conflicts of law arise when the aforementioned criteria are applied; these mostly arise between the common law and customary laws and personal laws and the laws of the location where the property is based. It is necessary to ascertain which of the aforementioned laws will take precedence, ensuring fair and equitable access to inheritance for all affected beneficiaries.

a) The type of marriage entered into: If the intestate, on the other hand, marries under local law and custom, that is, a marriage not governed by the Act; for instance, if the husband participated in a Yoruba ceremony of being engaged and carrying wine, but did not marry his wife in a church or visit the marriage registry, then intestacy his estate would be governed by his deceased custom.

i. Ijaw succession rights are bilineal, meaning that they are determined by the kind of marriage that an individual's parents entered.

ii. In 'Iya' (or big-dowry) marriage, the children of their mother have the right of succession in their father's family. However, in 'Igwe' (small-dowry) marriage, the children and their mother will only receive inheritances from their mother's side of the family, that is, from their maternal uncles or other relatives.

b) The personal law deceased: The various ethnic groups and tribes in Nigeria have different inheritance and succession laws. Generally speaking, regardless of where the property is located or where the death took place, the distribution of a deceased person's estate when they pass away intestate is governed by their personal customary law. As we proceed through the cases, scholars have taken into consideration the following two situations:

1) Where the deceased sticks to his personal law

i. In Tapa v. Kuka, the deceased was a Nupe man of Bida tribe, he died intestate leaving landed property in Lagos. It was held by Brooke J, that the law to be applied in determining who was entitled to administer the estate was the deceased's personal law of Nupe and not that of Lagos.

ii. In Idehen vs. Idehen; the "i*giogbe*" custom where the deceased cannot deny his eldest son to this customary inheritance by giving out the house in which the deceased lived in until he died another by Will was upheld as the personal law of the deceased binding on him. The rationale for this, is the Benin "*ukhure*" tradition wherein the '*igiogbe*' concept is based on ancestral worship to be kept by the eldest son at the conclusion of his deceased father's burial ceremonies.

iii. This Benin Kingdom personal laws on the doctrine of exclusive eldest son primogeniture also applies to most parts of Igbo land including Onitsha, which by history, originated from the Benin Kingdom as seen in the case of Ejiamike vs. Ejiamike. There is also the interesting custom, which requires that the property of a deceased woman, which she acquired before her marriage, go back to her family on her demise.

iv. In the Olowu v. Olowu case, the deceased established the local law as his personal law during his lifetime. The deceased was a Yoruba man who was born in Ijesha and spent his entire life in Benin City. He obtained land there and wed Bini women. He became a naturalized Bini man. His estate was divided in accordance with Bini native law and custom after he passed away intestate.

Under the Yoruba's System

i. **Equality and Equity:** In Yoruba land, when someone passes away without a legal will, their estate is distributed equally and fairly. It is either devolved per stripe, that is, according to the number of wives the deceased had, rather than according to the number of *Igi kan kan*, or *Idi-Igi*, offspring. In certain regions of Yoruba land, the family head may exercise final discretion in cases of serious dispute by suggesting the *Ori Ojori* mode of distribution—that is, allocating the estate according to capital, i.e., the number of children rather than the number of wives.

ii. **Wives do not inherit:** According to the ruling in Suberu v. Sunmonu, it is a well-established Yoruba custom and native law that a wife cannot inherit her husband's property because she herself is a chattel that must be inherited by a husband's relative. In Sogunro-Davies v. Sogunro-Davies, Beckley J. held that Yoruba native law and custom deprived the wife of her inheritance right in her deceased husband's estate because devolution of property follows the blood. This opinion provided the rationale for the rule in Suberu v. Sunmonu. Therefore, upon the husband's death, unless a property is given to a wife and can be demonstrated to be an outright gift, it will pass as family property and be inherited by the husband's children or his family in the event that no children are born. The wife has no inheritance rights at all.

iii. **Children are equal**: The Yoruba customary laws have long established that daughters are entitled to the same inheritance as sons. The Yoruba people's long-standing customs and practices have given rise to their native laws and customs, particularly those pertaining to inheritance and succession. It appears that the Yoruba customary law governing succession and inheritance is common to all of the Yoruba States that make up the union. That being said, there are still some distinctions between the various sub-ethno cultural groupings.

Conclusion/Recommendations

From the foregoing, many nuances of different subjects in this paper emerged on the basis of the inadequacy of cultural patterns of both the Ancient Near East and the Old Testament. Whereas, these two cultures indeed contributed immensely to shaping laws and constitutions in the contemporary society, it is not in doubt that these laws on their own were simply immediate panacea to emerging behavioural and cultural patterns of the people of that time. It will be a great disservice to these cultures if the contemporary society rigidly appropriates their laws on inheritance without taking into considerations the cultural and behavioural realities of the contemporary society. Each people of every generation must re-read these laws and properly contextualise them for proper applicability. One of such areas of departure should be Progeniture as practiced both in the Ancient Near East and the Old Testament.

Moreover, widows are disinherited upon the death of their husbands, who were viewed as their hosts during their lives, because women in the traditional Yoruba community in Nigeria are constantly viewed as unique guests, visitors, strangers, and the like in their married homes. This suggests that women are not supposed to be property owners. Consequently, though, a wife made contributions to the acquisition of the estate, she does not have the right to inherit her husband's estate in any patrilineal society. It is therefore believed that all of the deceased's children, regardless of age, sex, or educational attainment, have the sole right to inherit property. This is not how it should be.

However, the sex of the first child is not a determinant of property inheritance in some places, whereas the sex of the first child determines property inheritance in some other places among the Yoruba people, while women without children are not considered in property inheritance; hence, no child, no property. This too should not be so!

This highlights once more how important kids are to marriages. Three factors are taken into consideration for widows without children: (1) at the discretion of the deceased's extended family to prevent jealousy and bad things from happening to the departed's kids. (2) If the widow is a good person; and (3) if the widow can produce witnesses who attest to the fact that the husband bequeathed her particular property prior to his passing. As a result, the Yoruba people must take these customs into account and modify them to take into account the demands of inclusivity as well as modern realities.

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