

Course Reading

Dershowitz, Alan M. "Jacob Deceives—and Gets Deceived." In *The Genesis of Justice: Ten Stories of Biblical Injustice that Led to the Ten Commandments and Modern Law*, 112-146. New York: Warner Books, 2000.

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CHAPTER 7

**Jacob Deceives—and
Gets Deceived**

When her days were fulfilled for bearing, here: twins were in her body!

The first one came out ruddy, like a hairy mantle all over, so they called his name: Esav [Esau in English]/Rough-One. After that his brother came out, his hand grasping Esav's heel, so they called his name: Yaakov [Jacob in English]/Heel-Holder. . . .

The lads grew up:

Esav became a man who knew the hunt, a man of the field, but Yaakov was a plain man, staying among the tents.

Yitzhak grew to love Esav, for [he brought] hunted-game for his mouth,

but Rivka [Rebecca in English] loved Yaakov.

Once Yaakov was boiling boiled-stew,

when Esav came in from the field, and he was weary.

Esav said to Yaakov:

Pray give me a gulp of the red-stuff, that red-stuff, for I am so weary! . . .

Yaakov said:

Sell me your firstborn-right here-and-now.

Esav said:

Here, I am on my way to dying, so what good to me is a firstborn-right?

Yaakov said:

Swear to me here-and-now.

He swore to him and sold his firstborn-right to Yaakov.

Yaakov gave Esav bread and boiled lentils;

he ate and drank and arose and went off.

Thus did Esav despise the firstborn-right.

GENESIS 25: 24–34

Now when Yitzhak was old and his eyes had become too dim for seeing,

he called Esav, his elder son, and said to him:

My son!

He said to him:

Here I am.

He said:

Now here, I have grown old, and do not know the day of my death.

So now, pray pick up your weapons—your hanging-quiver and your bow,

go out into the field and hunt me down some hunted-game, and make me a delicacy, such as I love;

bring it to me, and I will eat it,

that I may give you my own blessing before I die.

Now Rivka was listening as Yitzhak spoke to Esav his son, and so when Esav went off into the fields to hunt down

hunted-game to bring [to him],

Rivka said to Yaakov her son, saying: . . .

Pray go to the flock and take me two fine goat kids from there,

*I will make them into a delicacy for your father, such as he loves;
you bring it to your father, and he will eat, so that he may give you blessing before his death.*

*Yaakov said to Rivka his mother:
Here, Esav my brother is a hairy man, and I am a smooth man,
perhaps my father will feel me—then I will be like a trickster in his eyes,
and I will bring a curse and not a blessing on myself!*

*His mother said to him:
Let your curse be on me, my son!
Only: listen to my voice and go, take them for me.
He went and took and brought them to his mother, and his mother made a delicacy, such as his father loved.*

*Rivka then took the garments of Esav, her elder son, the choicest ones that were with her in the house,
and clothed Yaakov, her younger son;
and with the skins of the goat kids, she clothed his hands and the smooth-parts of his neck.*

*Then she placed the delicacy and the bread that she had made in the hand of Yaakov her son.
He came to his father and said:
Father!
He said:
Here I am. Which one are you, my son?
Yaakov said to his father:
I am Esav, your firstborn.
I have done as you spoke to me:
Pray arise, sit and eat from my hunted-game,
that you may give me your own blessing.*

*Yitzhak said to his son:
How did you find it so hastily, my son?
He said: indeed, YHWH your God made it happen for me.*

*Yitzhak said to Yaakov:
Pray come closer, that I may feel you, my son,
whether you are really my son Esav or not.
Yaakov moved closer to Yitzhak his father.
He felt him and said:
The voice is Yaakov's voice, the hands are Esav's hands—
but he did not recognize him, for his hands were like the hands of
Esav his brother, hairy.
Now he was about to bless him,
when he said:
Are you he, my son Esav?
He said:
I am.*

GENESIS 27:1–24

*Now Lavan had two daughters: the name of the elder was Lea, the name of the younger was Rahel [Rachel in English].
Lea's eyes were delicate, but Rahel was fair of form and fair to look at.
And Yaakov fell in love with Rahel.
He said:
I will serve you seven years for Rahel, your younger daughter. . . .
So Yaakov served seven years for Rahel,
yet they were in his eyes as but a few days, because of his love for her. . . .
Now . . .
he took Lea his daughter and brought her to him,
and he came in to her.
Lavan also gave her Zilpa his maid,
for Lea his daughter as a maid.*

Now in the morning:

here, she was Leah

He said to Lavan:

What is this that you have done to me!

Was it not for Rahel that I served you?

Why have you deceived me?

Lavan said:

*Such is not done in our place, giving away the younger before
the firstborn;*

*just fill out the bridal-week for this one, then we shall give you
that one also,*

*for the service which you will serve me for yet another seven
years.*

*Yaakov did so—he fulfilled the bridal-week for this one,
and then he gave him Rahel his daughter as a wife.*

*Lavan also gave Rahel his daughter Bilha his maid,
for her as a maid.*

*So he came in to Rahel also,
and he loved Rahel also,
more than Leah.*

Then he served him for yet another seven years.

*[Rachel eventually gives birth to Joseph, to whom Jacob gives
a coat of many colors.]*

GENESIS 29:16–30

*So it was, when Yosef [Joseph in English] came to his
brothers,*

*that they stripped Yosef of his coat,
the ornamented coat that he had on,
and took him and cast him into the pit. . . .*

*Meanwhile, some Midyanite men, merchants, passed by;
they hauled up Yosef from the pit*

*and sold Yosef to the Yishmaelites, for twenty pieces-of-silver.
They brought Yosef to Egypt.*

But they took Yosef's coat,

they slew a hairy goat

and dipped the coat in the blood.

*They had the ornamented coat sent out
and had it brought to their father and said:*

We found this;

pray recognize

whether it is your son's coat or not!

He recognized it

and said:

My son's coat!

An ill-tempered beast has devoured him!

Yosef is torn, torn-to-pieces!

GENESIS 37:23–33

Jacob, one of the most complex and interesting of the patriarchs of Genesis, lived a life of greatness and devotion to God, but also one of deceit and guile. His children seemed to follow in his footsteps. Yet God blesses Jacob repeatedly, bestowing on his male children the honor of tribal leadership. Why is such checkered conduct so highly rewarded?

A passing glance into Jacob's personal history shows us a man who cheated his twin brother, Esau, twice. The first time, the young Jacob withheld food from his fainting brother until Esau "sold" him his birthright. The second time, the mature Jacob—at the behest of his calculating mother—tricked his blind, dying father into giving him the blessing reserved for his brother. According to a midrash, Jacob had even

tried to emerge first from the womb by grabbing hold of Esau's heel. The midrash justifies the actions of the patriarch-to-be by speculating that Jacob "had been conceived first."¹ The evidence offered in support of this speculation seems more metaphoric than scientific. "The first drop was Jacob's . . . for consider: if you place two diamonds in a tube, does not the one put in first, come out last?"²

Some commentators go to great lengths in their efforts to justify Jacob's trickery, arguing that since he was far more suited to the work of leadership, and since God had prophesied to their mother that "the elder shall be servant to the younger," he was carrying out God's will.³ Church fathers, like the rabbis, excused the ruse. Jerome called it a laudable lie, and Aquinas and Augustine defended the deception.⁴ Some commentators argue that Isaac was not actually deceived, since he suspected that it was Jacob who was obtaining the blessing. But even if all of that is true, it is also true that Jacob employed means—extortion and deception—that are unacceptable in a just society. What then are the lessons to be learned from Jacob's acts of deception?

Let me offer an interpretation from the perspective of a teacher of law. The entire Book of Genesis is about the early development of justice in human society. Jacob is born into a world with few rules and many inconsistent precedents regarding deception. His father and grandfather, Isaac and Abraham, pretended their wives were their sisters in order to save their own lives. Moreover, his God is inconsistent in carrying out threats and promises. The result is a violent and lawless world. Remember too that the world of Genesis is without a hereafter in which virtue on

earth is rewarded in heaven and vice on earth is punished in hell. All reward and punishment, both divine and earthly, are given in this world, where all can see the workings of justice.⁵ All too often the inhabitants of Jacob's world saw virtue punished and vice rewarded—at least in the short run.

Along comes Jacob, whose entire life appears to offer proof that in the long run people reap what they sow. He who lives by deceit shall himself be deceived. The biblical narrative goes out of its way to show that Jacob's deceptions against others are turned back against him—over and over again. Moreover the deceptions inflicted upon Jacob are strikingly symmetrical with those he inflicted upon his brother and father.

First he is deceived by his father-in-law, Lavan, who plays bait and switch with his daughters. After working seven years for the hand of Lavan's younger daughter, Rachel, Jacob wakes up to discover that he has married the older daughter, Leah. Lavan's explanation of the deception brings home the symmetry: "Such is not done in our place, giving away the younger before the firstborn." After learning of Jacob's prior deceptions, Lavan describes his son-in-law as "my bone and flesh," which some have interpreted as soul mates in deception. Jacob had to understand the not-so-subtle moral of the story: Just as Jacob deceived in order to undo the natural order of birth, he was deceived to restore it.⁶ Just as Jacob deceived his dim-sighted father, so too was he deceived in the darkness of his wedding tent.⁷

A midrash elaborates on Jacob's poetic justice. When he awakes on the morning after his wedding night and sees that he has slept with Leah, he re-

proaches her, saying: “O thou deceiver, daughter of a deceiver, why didst thou answer me when I called Rachel’s name?” Leah responds: “Is there a teacher without a pupil? I but profited by thy instruction. When thy father called thee Esau, didst thou not say, here am I?⁸ So did you call me and I answered you.”⁹

After marrying Lavan’s daughters (and their handmaids) and having children by them, Jacob deceives Lavan by sneaking away with his entire family and cattle, while his father-in-law was shearing sheep.¹⁰ He persuades his wives to join him with “great rhetorical cunning.”¹¹ His wife Rachel also deceives her own father by stealing his idols and then covering up her theft. (A midrash says that Rachel stole her father’s idols so “that her father might not learn about their [Jacob and family] flight *from his Teraphim*” [emphasis added]. This suggests that Rachel actually believed the idols had power of communication!)¹²

Later in life Jacob is deceived by his own children. Considering their lineage and training, it should not be surprising that they seem deceptive by nature. In the Dina story, which we consider in the next chapter, “The sons of Jacob answered Shechem and Hamor his father with guile [*b’mirma*].” They tricked all the men of the clan of Hamor into circumcising themselves, and then, while the Hamorites were weak, Simeon and Levi slaughtered them all.

Jacob was also tricked into believing that his youngest son, Joseph, had been eaten by a wild beast. The means employed to *deceive* Jacob were strikingly similar to the means Jacob had employed to *deceive* his father. Just as Jacob masqueraded beneath the fur of a goatskin, Jacob’s sons killed a “hairy goat” and

dipped Joseph’s coat in its blood. What goes around comes around.

I have repeatedly observed the consequences of deception in the cases I teach and work on. One striking example was a prosecution against a restaurant owner whose establishment was burned to the ground. An inspection of his books revealed that the restaurant was overinsured: It had been valued far in excess of its meager income. For that reason, the owner was indicted for insurance fraud and arson. Eventually he confided to his lawyer that he had been cheating on his taxes by keeping false books understating his income. In fact, the restaurant was making a fortune—in cash—and was underinsured. A rival, understanding the catch-22, torched the restaurant. The case was eventually plea-bargained. As Sir Walter Scott was to put it centuries earlier: “Oh, what a tangled web we weave, when first we practice to deceive!”

If we are to read Jacob’s life as a cautionary tale warning against the wages of deception, why then did the wily Jacob find so much favor in God’s eyes? Why did God select this family to lead His chosen people? To understand God’s seemingly unwarranted fondness for both father and sons one must appreciate that they were acting in a state of nature. In such a state, guile and deception are valuable traits, especially as alternatives to violence. There is no recourse to a legal system in the world of Genesis—no lawsuits, no injunctions, no penal sanctions. In order to succeed and not be victimized, an individual must rely on either violence or guile. Another ambitious man who believed that he was entitled to his older brother’s birthright might have killed his competitor, as so many siblings have done in history and literature. Jacob sim-

ply outsmarted Esau, thus following in the family tradition established by his father and grandfather, both of whom had outwitted kings, rather than his ancestor Cain, who had resorted to fratricide. Like Odysseus in Greek literature, Jacob is praised as a wily man, ready and able to employ guile and deception to navigate the dangerous waters of life. In his interactions with other humans, Jacob eschews the violence of his more physical twin, Esau, preferring brain to brawn.¹³

Guile is the great leveler between the physically unequal. Jacob understands that he is no match for his stronger brother in the arena of physical combat. Nor is his clan a match for the far more numerous and warlike tribes. Accordingly, he must rely on his wit. It is interesting to note that the one attribute that is equally characteristic of biblical man and woman is guile. Although women are presented as physically, spiritually, and economically weaker than their male counterparts, they are equally adept at using trickery to level the playing field. Eve, Lot's daughters, Sarah, Rebecca, Rachel, Leah, Tamar, and Potaphar's wife all rely on their feminine wiles. Jacob, by favoring guile over the brute force of his stronger brother, can be said to be reflecting the feminine as well as the Jewish aspect of Rebecca's twins. Jews as a people and the women of Genesis share a common need to resort to guile in order to achieve the equality denied them in physical strength.

Jacob's actions toward his fellow man are often more tactical than principled. In the Dina story discussed in the next chapter we will see Jacob condemn the violence of his sons Simeon and Levi not because it is wrong, but because it will make him look bad in the eyes of his neighbors and subject him to possible

retaliation. It is noteworthy that he does not condemn their deceptiveness in misusing circumcision, only their violence. For Jacob, noble ends justify ignoble means, as long as the benefits outweigh the costs. Because his family is weak in number but strong in intellect, he prefers the weapon of wit over sword. He chooses the battlefield on which he can win. In a world without law, what better qualification for leadership could there be?

Jacob extorts and tricks his brother into surrendering the benefits of his primogeniture, because he knows that he will be a more suitable leader. He is right. His mother knows he is right. Even his blind father suspects he may be right. And God knows he is right. Perhaps having Jacob born after his stronger brother was a test of his leadership skills: Can a second-born child depose his older brother from his "natural" status as leader? He passes the test with flying colors, though not without paying a heavy moral and psychological price.

For all of his trickery, Jacob never tries to deceive God. He bargains with Him, even wrestles with Him, but he is always straight with God. The result is that God blesses Jacob with leadership, but makes him understand that the wages of deception are deception. He who lives by guile will suffer from guile. In a world where deception is often rewarded in the short run, the life of Jacob demonstrates that over time we reap what we sow. Viewed backward—as all history is viewed—we see that Jacob pays a high personal price for the qualities that make him a good leader in a world before formal law. He tells Pharaoh: "Fear and evil have been the days of the years of my life."¹⁴ Clearly, although Jacob was a great leader who left a

wonderful legacy, the constant deceptions took an enormous toll on his personal life. This is a trade-off that will be repeated throughout history, especially in the lives of great leaders.

A contemporary commentator sees a more powerful moral in the Jacob narrative: "God's memory is just; the punishment of evil is not escaped. Sooner or later we all eat at the table of consequence."¹⁵ In support of this long-term view of symmetrical justice, he cites a traditional rabbinic interpretation of the Jacob story: "Whoever maintains that the Holy One is lax in dispensing justice is grievously mistaken. God is long suffering but ultimately collects His due. Jacob made Esau break out into a cry only once, but . . . the descendants of Jacob were punished" both in the near term and throughout Jewish history.¹⁶

As with Jacob, we do sometimes see long-term, symmetrical justice. When such justice occurs, it becomes a first-page news item, as with the case of Lamija Jaha, an Albanian Muslim whose parents had sheltered Jews during the Holocaust and whose family was rescued by Israel nearly sixty years later.¹⁷ More often, life confirms the maudlin observation of Ecclesiastes:

I have seen wrong-doers being carried with pomp to their graves, and, as men return from the sacred ground, the evil-doers are praised in the city where they had acted thus. Indeed, this is vanity!

Because judgment upon an evil deed is not executed speedily, men's hearts are encouraged to do wrong, for a sinner commits a hundred crimes and God is patient with him, though I

know the answer that "it will be well in the end with those who revere God because they fear Him and it will be far from well with the sinner, who, like a shadow, will not long endure, because he does not fear God."

Here is a vanity that takes place on the earth—there are righteous men who receive the recompense due to the wicked, and wicked men who receive the recompense due to the righteous. I say, this is indeed vanity.

If the intended message of the Jacob narrative is that you (and your descendants) inevitably reap what you sow, it is a false and dangerous message. All too often the wages of sin are prosperity and happiness. It is precisely because justice is not the natural condition of mankind—or the inevitable workings of God—that we are obliged to pursue it actively and not take it for granted. As the subsequent Book of Deuteronomy will mandate: Justice, justice shall you *pursue*—actively. Nor will it be simple. As Abraham taught us, some guilty must go free to assure that the innocent are not wrongly convicted. For those who now believe in a hereafter, those guilty will eventually receive their just deserts. For those who believe that the only justice is here on earth, the occasional freeing of the guilty will be seen as a necessary cost of every fair process of justice. Perhaps the freed guilty person will suffer in his life as Jacob did. Perhaps not. The story of a Jacob is a lesson about the symmetry of justice even in the absence of formal law. Yet even the presence of formal law does not always assure perfect justice in the real world. However, as we will see

in the next chapter, the absence of formal law often leads to vigilantism.

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1. Soncino Chumash at p. 141, n. 26.
 2. *Midrash Rabbah*, vol. 2, p. 563.
 3. Genesis 25:23.
 4. See Plant, W. Gunther, ed., *The Torah: A Modern Commentary* (New York: Union of American Hebrew Congregations, 1981), p. 190.
 5. Some rewards and punishments are, however, postponed to future generations. This is similar, in some respects, to the hereafter. See Chapter 13 infra.
 6. See Kass, Leon, *Commentary*, March 1999, p. 48.
 7. *Ibid.* at p. 49.
 8. Ginzberg at p. 361.
 9. *Midrash Rabbah*, vol. 2, p. 650.
 10. Genesis 31:17–21.
 11. See Kass at p. 52.
 12. Ginzberg at p. 371.
 13. In the words of one contemporary commentator, he relies “on craftiness to out-wit superior force” (Kass at p. 52).
 14. Genesis 47:9.
 15. Schulweis, p. 72.
 16. Schulweis, p. 72, quoting *Genesis Rabbah* 67:4.
 17. See *New York Times*, May 2, 1999, p. 1.

CHAPTER 8

Dina Is Raped—and Her Brothers Take Revenge

*Now Dina, Lea's daughter, whom she had borne to Yaakov,
went out to see the women of the land.
And, Shekhem son of Hamor the Hivvite, the prince of the
land, saw her:
he took her and lay with her, forcing her.
But his emotions clung to Dina, Yaakov's daughter—he loved
the girl,
and he spoke to the heart of the girl.
So Shekhem said to Hamor his father, saying:
Take me this girl as a wife! . . .
Hamor spoke with [Jacob and his sons], saying:
My son Shekhem—
his emotions are so attached to your daughter,
[so] pray give her to him as a wife!
And make marriage-alliances with us:
give us your daughters, and our daughters take for yourselves,
and settle among us! . . .
Now Yaakov's sons answered Shekhem and Hamor his father
with deceit,
speaking [thus] because he had defiled Dina their sister,
they said to them:*