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## THE FAMILY IN THE ANCIENT NEAR EAST\*

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*"Give me sons, or else I die." (Gen.30:1)*

### I. MONOGAMY AND POLYGAMY

The Near Eastern family of historical times is patriarchal in character and organization.<sup>1</sup> Like the king who rules over his realm so does the pater familias dominate his household. He is, as the West Semites called him, the *baal* ("owner") of his wives and children. In its infancy the state fought an unceasing battle to restrict the absolute authority of the father who, within his own domain, had the physical power and the legal right to treat his wives and children as he pleased and even to dispose of them as he saw fit. The outcome of this struggle depended, as is the case in every combat, on the respective strength of the parties involved: in a strong state (as was the case in Babylonia during the periods of the Third Dynasty of Ur and the Hammurabi dynasty), the father's power was kept within limits; in a weak state (as was the case in Assyria, Syria and Palestine during the second millennium B.C.), the father's power was almost unlimited.

According to the Hammurabi code the Babylonian family was basically monogamous in character. Parag.167 takes monogamy for granted when it prescribes that if a man remarries after his wife's death, the children of both wives shall share equally in the inheritance of their father. Only in exceptional cases may a man marry a second wife or take a concubine while his first wife is still alive. These are: (1) if his wife is incurably ill (parag.148); (2) if she is of a reprehensible character, neglecting her duties and belittling him in public (parag.141); (3) if she is sterile (parags.146-7); and (4) if she is a priestess and is forbidden by religious law to bear children (parags. 144-5). In all of these cases the inability of the wife to provide her husband with children is deemed sufficient ground for taking a second wife or a concubine. On the other hand, a man could have as many slave concubines as he wished. The code explicitly recognizes this fact when it decrees that a slave concubine and her children shall be set free after the death of the master (parags.170-71).

The Assyrian family was basically polygamous in character. A man had one chief or "veiled" wife but he could take as many free-born concubines as he wished, regardless of whether he had children by his chief wife or not. The Middle Assyrian laws prescribe that if a man has died and his "veiled" wife has no son, the sons of his concubines shall inherit him (AL parag.41). The Harran census lists many men with two wives.<sup>2</sup> In the Hurrian colony in Nuzi a man could legally marry two wives. In one marriage contract a bridegroom

promises that as long as his bride lives he will not take another wife or a concubine.<sup>3</sup>

Turning to Syria and Palestine we find that both the Canaanite and the Israelite families were polygamous. The Ugaritic god Baal has three "perfect brides."<sup>4</sup> The Deuteronomic law takes it as a matter of fact that the normal well-to-do family consisted of two wives (21:15). Since polygamy was the rule (with the exception of the poor), a man could have as many wives and concubines as he could financially support (cf. II Chron. 11:18-21; 13:21).

## II. MARRIAGE AND DIVORCE

The normal form of marriage in the Ancient Near East was of the patriarchal type in which the woman left her own family to enter the house of her husband. There are, however, cases where the Middle Assyrian laws speak of a married woman who dwells in her father's house and her husband pays her "visits." On the basis of these references some scholars maintain that there were two distinct types of marriage in Assyria, viz., one of a patriarchal character and the other of the *erebu* type in which the woman remained in her father's house. Driver and Miles argue convincingly that the mere fact of a married woman sometimes dwelling in her father's house does not necessarily indicate a different type of marriage (AL pp.134-42). Be it as it may, it is quite clear from the laws that the marital status of a woman dwelling in her father's house was the same as that of one residing in her husband's house, namely, the husband had to support her; when he wished to abandon her he had to give her a bill of divorce; and if she remained a widow, her father-in-law had the same control over her as if she were living in his house (AL parags. 30,38).

Marriage in the Ancient Near East was a civil affair and no religious sanction was necessary. In Babylonia marriage was based on a written contract. Parag. 128 of the Hammurabi code states this clearly: "If a man take a wife and do not draw up a contract (*rikistum*) with her, that woman is not a wife." Such a marriage contract usually contained four or five clauses: (1) the names of the parties concerned and the declaration of marriage; (2) the amount of the *tirhatu*; (3)

\* The following abbreviations have been used in this article:

AL G. R. Driver and J. C. Miles, The Assyrian Laws.

BASOR Bulletin of the American Schools of Oriental Research.

MSL B. Landsberger, Materialien zum sumerischen Lexikon.

UZAP M. Schorr, Urkunden des altbabylonischen Zivil- und Prozessrechts.

ZA Zeitschrift fuer Assyriologie.

1. References to matriarchal and fratriarchal family organizations are found both in the cuneiform sources and in the Old Testament, cf. P. Koschaker, "Fratriarchat, Hausgemeinschaft und Mutterrecht in Keilschriftrechten," ZA.Nf.7(1935), pp.1-89; V. Aptowitzer, "Spuren des Matriarchats im juedischen Schrifttum," Hebrew Union College, Annual,4,(1927), pp.207-40,5 (1928), pp.261-97; C. H. Gordon, "Fratriarchy in the Old Testament," Journal of Bib. Literature, 54(1935), pp.223-31.

2. Cf. C. H. W. Johns, An Assyrian Doomsday Book, p. 64.

3. Harvard Semitic Series IX 24.

4. See now J. Obermann, Ugaritic Mythology, p. 30.

clause concerning the settlement in case of divorce; (4) oath of the parties; and (5) the names of the witnesses and the date. The Middle Assyrian laws prescribed that if a man lived with a widow for two years she is his wife even though a marriage contract (*riksu*) had not been drawn up (AL parag.34). On another occasion the law prescribes that if a woman whose husband has been sent on a mission of the king marries another man before the expiration of the five-year waiting period and her husband returns, he may take her and her children back "because she had not observed the contract" (AL parag.36). These references prove that a contract was necessary to legalize marriage in Assyria. This was also the case in Nuzi where the term for marriage contract was *tuppi riksi*.<sup>5</sup> There is no evidence that a written contract was deemed necessary to legalize marriage in Palestine though it is hardly likely that it was unknown. The divorce formula in Hosea 2:2 ("She is not my wife, I am not her husband") may have been a part of a written bill of divorce (cf. Dt.24:1), and if that was so one may assume that a written marriage contract was in use.

Before the actual marriage took place it was the custom for the bridegroom to present to the bride's father a sum of money or its equivalent in goods. This sum of money is called in Babylonia, Assyria and Nuzi *tirhatu*, in Ugarit *tirhatu* and *mohar*,<sup>6</sup> and in the Old Testament *mohar*. What is the meaning of the *tirhatu-mohar*? Scholars differ as to its definition. One school interprets the *tirhatu-mohar* as "bride-price" and hence concludes that the Ancient Near Eastern marriage was at least originally "purchase-marriage." The other school explains it, to use Professor Millar Burrows' words, as a "compensation-gift" and hence concludes that marriage never was "purchase-marriage." It is nowhere stated that *tirhatu* (Sumerian: *nig-mi-us-sa*)<sup>7</sup> was an essential element of the marriage transaction in Babylonia and Assyria and that without its payment the marriage could not be consummated. Paragraphs 138-39 of the Hammurabi code which deal with the case of divorce prescribe that if a man divorces his wife who has not given birth to children, he shall give her the equivalent of the *tirhatu*, but if no *tirhatu* was given at the time of the marriage, he shall give her one maneh of silver "for a divorce." On the other hand, however, we find that the giving of a *tirhatu* is taken as a matter of fact in the Hammurabi code (cf. parags.164,166), and mentioned with few exceptions, in the marriage contracts of Babylonia and Assyria. The crassest form of "marriage by purchase" is found in Nuzi. Here a man declared that he had received from his future son-in-law goods amounting to thirty shekels of silver as the *tirhatu* for his daughter and then goes on to

5. Cf. Chiera and Speiser, *Journal of the Amer. Or. Soc.*, 47(1927).p.43.no.6.

6. The terms *tirhatu* and *mohar* are used as synonyms in the Hymn to Nikkal, cf. Gordon, BASOR 65, pp.30-33.

7. See his monograph, *The Basis of Israelite Marriage*.

8. MSL pp.38:10;50:45;97:28.

9. C. H. Gordon, *Museon* 48(1935).p.127.no.XI.

say: "I have received, I am paid."<sup>9</sup> The Ugaritic Hymn to Nikkal which deals with the romance of the moon-god Yarah and the goddess Nikkal describes how during the wedding ceremony the precious metal given by Yarah as *mohar* to Nikkal's father is weighed on the family scale. In the Old Testament the term *mohar* is mentioned three times. Gen.34:12 relates that Shechem was willing to give as much *mohar* and gifts for Dinah as would be asked of him; I Sam.18:25 says that



Fig. 2. Law Code of Hammurabi, king of Babylonia about 1700 B. C., until recently (see p.41) the oldest code of laws known. At the top the king is shown receiving the laws from the divine judge, Shamash. (Replica in the Oriental Institute, University of Chicago)

David desired to give a *mohar* for Michal but Saul rejected it in favor of one hundred foreskins of Philistines; Ex.22:15-16 deals with an assault on a virgin where the law demands that the assailant must pay the "mohar of the virgins." In addition to these, the story of Jacob's fourteen years of service for Rachel and Leah (Gen.29; see also Ex.2:21; 3:1) shows that among the Canaanites and the Hebrews the *mohar*, or its equivalent in labor, was regarded as a "price" for the girl. Of course, among the wealthy and powerful, heroic deeds could be substituted for the *mohar* (cf. Josh.15:16; I Sam.18:25). In view of the con-

flicting evidence as to the meaning of the *tirhatu-mohar* it may be suggested that originally it was a compensation given to the bride's father for the loss of his daughter. In course of time, varying in accordance with the cultural level of a given society, it developed into a general custom with very slight relation to its original meaning.

Whatever significance the *tirhatu-mohar* had, it was not the only "payment" made in a marriage transaction. There were a number of other settlements of which the woman was the chief beneficiary. In Babylonia it was customary for the bridegroom to send a gift (*biblum*) to the bride's father. If the bridegroom changed his mind and later refused to marry the girl, he forfeited his gift, while if the father refused him his daughter, he had to pay double of its amount (Hammurabi code, parags. 159-61). Wealthy parents presented their daughters with a dowry (*sheriqtum*). It consisted of money or goods and often included also one or more female slaves. The female slaves served the married woman as her personal maids but they could also be used for another purpose. In case the woman proved barren she would give one of her maids to her husband as a child-bearing concubine and thus prevent him from taking another wife. The husband could make use of the dowry by investing it in business, but he had no legal title to it (parags. 176,183-84). It was the woman's private property given to her by her parents as a kind of insurance to fall back upon if widowed or divorced. After her death, her children inherited it. Often a husband would present gifts (*nudunnum*) to his wife (parag. 150, 171-72). Such gifts could not be reclaimed and they were, like the dowry, inherited by the woman's children.

As was the case in Babylonia, an Assyrian bridegroom sent gifts (called *biblu* and *zubullu*) to his bride's father. These gifts consisted of gold, silver, lead, and edible things. If the marriage was not consummated, the bridegroom would take the gifts back, with the exception of the edible goods (AL parags.30-31). An Assyrian bride received from her father a dowry (*shirqu*). This was her property and after her death it was inherited by her sons (AL parag. 29). A wealthy father-in-law presented to his daughter-in-law a wedding-gift called *huruppate*. It consisted of precious stones and edibles (AL parags.42-43). A husband often gave his wife gifts called *dumaqi* and *nudunnu*. The first consisted of jewelry and personal ornaments which her husband could take back after her death. If, however, he died before her and there were no sons, the widow inherited them (AL parags.25-26). The *nudunnu* was inherited by the sons after the mother's death (AL parags.27,32,46).

Marriage gifts in various forms were also bestowed upon Canaanite and Hebrew brides. The Ugaritic Hymn to Nikkal mentions the *thlh*

10. Cf. Gordon, BASOR 65(1937), pp.29-33.

11. Cf. Gordon, ZA 43(1936), p.58.

and *mlg*.<sup>10</sup> The first is the Old Testament *shillhim* (I Kings 9:16; cf. Micah 1:14), and the other is found in the Nuzi documents as *mulugu*.<sup>11</sup> Both represent gifts by a father to his daughter, that is, a dowry. Sarah, Leah, Rachel, and Rebecca had their own female slaves who were given to them as part of their dowry. Caleb gave his daughter a parcel of land as a wedding-gift (Josh.15:19). The dowry was the private property of the woman which she could take along with her when she remarried as is evident from the story of Abigail (I Sam.25:42). The bridegroom on his part also presented gifts to the bride. This was done by Eliezer in the name of Isaac when he gave to Rebecca silver, gold,



Fig. 3. Restoration of a small ivory plaque found at Megiddo and dating about 1200 B.C., showing a Canaanite maiden and her mode of dress. (Oriental Institute, University of Chicago)

and apparel (Gen.24:53). The *mattan* which Shechem offered to Jacob's sons was probably meant as a gift for Dinah (Gen.34:12).

Another type of marriage practiced in some parts of the Ancient Near East was the Levirate marriage. This institution has its roots in primitive society where a woman is acquired for wifedom by the head of the family for one of its members. She is, of course, given as a wife to one man, but when that man dies the widow still remains the property of the group and is given as a wife to another member

of the family. Remnants of this type of marriage are found in Nuzi, Assyria, and in Palestine. In Nuzi it was the custom to buy a girl *ana kallatuti* "for brideship," with the stipulation that the buyer would marry her off either to one of his sons, to one of his slaves, or take her himself. Such a girl remained in the house of her purchaser and, if her husband died, she was given to another member of the household until she was no longer able to bear children. According to parag. 33 of the Middle Assyrian laws if a man died without leaving children, his father may give the widow in marriage to one of his other sons or he may marry her himself. This and other laws dealing with the levirate marriage in the Assyrian code are not very clear and Driver-Miles may be right when they argue that there is no evidence of its existence in Assyria (AL pp.240-50). Koschaker, on the other hand, maintains that the levirate was known and practiced in Assyria but that it was applicable to the betrothed widow only.<sup>12</sup> That is to say, the law provides that when a father pays the "bride-price" for a girl and the bridegroom dies in the interim between betrothal and marriage, the father-in-law has the right to give the girl to another son of his or he may marry her himself, for by having paid the "bride-price" for her she becomes ipso facto his property.

While there is uncertainty as to the existence of the levirate marriage among the Assyrians, there is no doubt that this institution was in force in Canaan during the second millennium B.C. and that it was applied in a limited form in Palestine during the first millennium B.C. The earliest and socially the most crude form of the levirate (*yibbum*) is recorded in Gen. 38. Judah "took" Tamar as a wife for his firstborn Er. After Er's untimely death Judah asked his second son Onan to marry his brother's widow. When he too died shortly after, Judah asked his twice widowed daughter-in-law to wait until his third son would become of age and marry her. This was the proper thing to do. But it is evident from this very story that Canaanite society was at that time in revolt against a system which treated marriage as if it were a mere business deal. Onan was reluctant to marry Tamar; he had to be forced into it by the sheer weight of the law. Judah himself tried to evade the issue by forgetting to have his third son marry Tamar. To justify compliance with the law of an institution that was both economically and socially out of tune with the times, a new interpretation for this type of marriage was provided, namely, "To raise up seed for the (deceased) brother." Onan, as the story plainly tells us, refused to accept this new interpretation although its evasion was punishable by death. Centuries later Deuteronomy still clung

12. Quellenkritische Untersuchungen zu den "altassyrischen Gesetzen," Mitteilungen der Vorderasiatisch-Aegyptischen Gesellschaft, XXVI, 3, p. 48 ff.

13. MSL p. 103:8-3; see also *ibid.*, 99:49-6.

14. UAZP 3, 4, 5, etc.

15. MSL p. 103:1-7.



to the levirate custom although limiting greatly its applicability and scope. According to chapter 25:5-10, the levirate marriage is applicable only when the deceased left no children and when "brothers dwell together." Furthermore, the law nullifies itself by providing no penalty for its non-observance. It merely prescribes public censure for the levir who refuses to marry his brother's widow by subjecting him to a degrading ceremony called "the loosening of the shoe." Leviticus and Numbers do not mention the levirate at all; in fact, they legislate against it (Lev. 18:16;20:21,22;13;Num.27:8-11).

Ancient Near Eastern marriages were notoriously dissoluble. According to a Sumerian law, a man could divorce his wife at any time by pronouncing the formula "you are not my wife," and by paying her the sum of one-half maneh of silver.<sup>13</sup> The Hammurabi code accepted this law but with one exception, namely, that a sick wife cannot be divorced against her will (parags.148-49), otherwise a husband may do as he pleases. In the case of a first wife (*hirtum*) who has not given birth to children, the husband must pay her a sum of money equivalent to the *tirhatu* and must also return her dowry which she has brought from her father's house (parag.138). If there was no *tirhatu*, a member of the aristocracy has to pay one maneh of silver and a commoner one-third of a maneh of silver "for a divorce" (*uzubbum*) (parags.139-40). In the case of a concubine who has given birth to children, the dowry must be returned to her and in addition she receives a share of her husband's property in order to bring up the children; after the latter have grown up, she is entitled to a portion of her husband's estate equal to that of a son's share (parag. 137). Nothing is said in the code concerning a divorce of a first wife who has given birth to children. But it may be taken for granted that she could be divorced. This is evident from the marriage contracts. The divorce clause specifies the sum of money the husband would have to pay (irrespective of whether there were children or not) in case he should wish to divorce his wife. The amount paid "for a divorce" in the Hammurabi period varied from ten shekels to sixty shekels of silver.<sup>14</sup> The above cited cases deal with women who were divorced by husbands for no fault of their own. But in a case where the woman was guilty of frivolity, she could be divorced without any compensation and even severely punished. Thus if a woman belittles her husband and neglects her duties in the house, the husband may either send her away empty handed or reduce her to the status of a slave in his house and marry another woman (parag.141).

While a man could divorce his wife at his pleasure, a woman was threatened with dire results if she wished to exercise the same privilege. According to a Sumerian law if a woman "hate" her husband and say to him "You are not my husband," she shall be "thrown into the river."<sup>15</sup> The Hammurabi code allows a newly married woman before the act

of cohabitation to divorce her husband if she "hates" him. She may say to him "You shall not have me," take her dowry and return to her father's house. If, however, it can be proven that she had relations with another man and refuses to live with her lawful husband because she dislikes him, she is treated like an adulteress and "thrown into the water" (parags.142-3).<sup>16</sup>

In actual life, however, things were not as cruel as the laws would make us believe. Marriage in Babylonia rested on a written agreement and both parties were expected to live up to the stipulations as set forth in the contract. A clause in the marriage contract defines the penalties for each party in case of divorce. In some contracts the man has to pay a fine while the woman is subject to the death penalty;<sup>17</sup> in others, the woman's status is the same as that of a man, namely, she can divorce her husband at any time by merely paying a fine.<sup>18</sup>

Sumerian and Babylonian laws put an obstacle in the path of divorce by prescribing a fine to be paid by the husband while the Assyrian law absolves him of any responsibility. Here a man is not required to give his wife anything for a divorce. Parag. 37 of the Middle Assyrian laws merely states that if a man desires to give his wife something he may, but if he does not "she shall go forth empty." Parag. 38, dealing with a case where the woman is dwelling in her father's house, prescribes that the man has the right to take his *dumaqi* (ornaments) back, which he had given his wife, but cannot reclaim his *tirhatu*. Nothing is said in these laws about the dowry. It is, however, to be assumed that the husband has the right to take what was his and the woman has the right to retain what was hers. Unlike the Babylonian woman it would seem that an Assyrian woman could under no circumstances divorce her husband.

As was the case in Assyria, a Hebrew could divorce his wife at will and was not obliged to make any provisions for her future maintenance. As is evident from Hosea 2:2 it was enough for the husband to pronounce the simple formula "She is not my wife, I am not her husband," and the marriage was thereby dissolved. Later, the Deuteronomic legislation put some restrictions in the way of unjustified divorce. The husband had to give his wife a "bill of divorce" (24: 1; cf. Isa.50:1; Jer. 3:8). A man could not divorce his newly married wife on the pretext that she was not a virgin; he had to prove it and if his accusation was false, he had to pay a fine and could never divorce her (22:19). A man could not remarry his divorced wife after she had married another man (24:1-4). These mild obstacles and Malachi's sharp denunciation of the frequency of divorce (2:14 ff) bring into sharp relief the precarious status and the complete helplessness of the married woman in ancient Israel.

16. For the interpretation of paragraphs 142-43 cf. Koschaker, ZA 35(1924), p.199 ff.

17. Cf. UAZP 2, 3, 4, 5, 6, 32, 33.

18. Ibid., 1.

Adultery was a crime when committed by the betrothed girl and married woman but not when committed by the husband. According to the Hammurabi code a woman who was caught in the act of adultery shall, together with her lover, be drowned. If, however, the husband forgives his wife, then the king shall pardon the paramour (parag.129). The man's guilt in this case, as in all cases involving adultery, is based upon his trespass of the husband's property: he has stolen a man's wife and theft is punishable by death. If a man accuses his wife of adultery and cannot prove it, she must take an oath by the name of the god and then return to her husband's house (parag.131). On the other hand, if a stranger accuses a woman of adultery and cannot prove

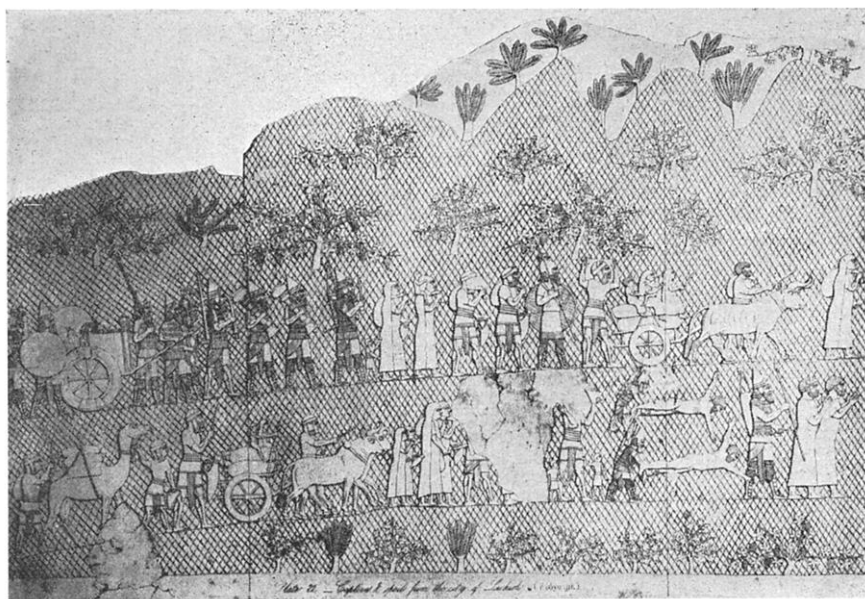


Fig. 4. Judean captives being led away into slavery by the Assyrians after the siege of Lachish in 701 B.C. This relief is an important source for our knowledge of Judean dress. (From Layard, *Monuments of Nineveh*)

it, the woman must undergo the ordeal by water "for the sake of her husband" (parag.132).

An Assyrian woman who has committed adultery in her paramour's house is put to death; if the man knew that she was married, the same fate also befalls him (AL parag.13). If a man has relations with a woman in a temple-brothel or public place knowing that she was married, the man is to be treated in the same manner as the aggrieved husband would treat his wife; if he did not know that she was married, he goes free and the husband shall treat his wife as he sees fit (AL parag.14). If a man finds his wife in the act of adultery, he may put the couple to death instantly, but if he fails to do so and instead hails

them before a court, the judges shall investigate the case and whatever the husband does to his wife must equally be inflicted upon the man (AL parags.15,24).

Unlike the Babylonians and the Assyrians who viewed adultery only as a crime against the proprietary rights of the husband, the Old Testament legislation considers adultery also as a grave offense against morality. Both parties are punished by death because they have committed an evil act in Israel (Lev.20:20;Dt.22:22-27). On the other hand, if a man assaulted a virgin he must pay fifty (shekels) of silver to her father, marry the girl, and because he had violated her she could never be divorced (*ibid.*,28-29). Similar to the Babylonian law, a woman who is accused by her husband of unfaithfulness must undergo the ordeal of "the bitter water" (Num.5:12-30).

According to the Hammurabi code a woman whose husband was taken prisoner by the enemy cannot remarry as long as there is "something to eat in the house," but if there is nothing to eat in the house, she may "enter another man's house." If, in the latter case, she has given birth to children and then her former husband returns, the woman shall return to him, while the children remain with their father (parags.133-135). On the other hand, if a man has voluntarily deserted his city, and his wife entered the house of another man, he cannot take her back upon his return (parag.136). Thus a deserted wife, regardless of whether she has children or not and whether she can support herself or not, is free to remarry. According to the Middle Assyrian laws, if a wife is living in her father's house and her husband deserts her, if she has sons who are able to earn a living, she is not free to remarry for a period of five years. If her first husband comes back after the lapse of the five-year period and can prove that his absence was forced upon him, he may take his wife back even though she had married and given birth to children in the meantime, provided he can supply her second husband with another woman (AL parag.36). If an official or a professional soldier is captured by the enemy and his wife has neither father-in-law nor sons to support her, she must wait two years before she can remarry. Whenever the husband comes back from captivity, the woman must return to him leaving her children with her second husband (parag.45).

The Hammurabi code provides that a widow who has given birth to children shall receive her dowry and the gifts which her husband had deeded to her during his life. If her husband had not given her a gift, she shall receive a portion of her husband's estate. She may, if she so desires, stay in her husband's house and her children have no right to drive her out (parags.171-172). In the Neo-Babylonian period the widow received, even if she has not given birth to children,

her dowry and her husband's gifts, and in case there was neither, a share of her husband's estate.<sup>19</sup> A free woman who married a slave and jointly with him engaged in business, receives after the slave's death half of his property for herself and her children (parag.176). A slave-concubine is released after the death of her master-husband but receives nothing from his estate (parag.171). A widow whose children are minors may marry again by permission of the court and then she and her husband are required to manage the estate of the deceased for the children and rear them (parag.177).

An Assyrian widow who has sons and whose husband had made

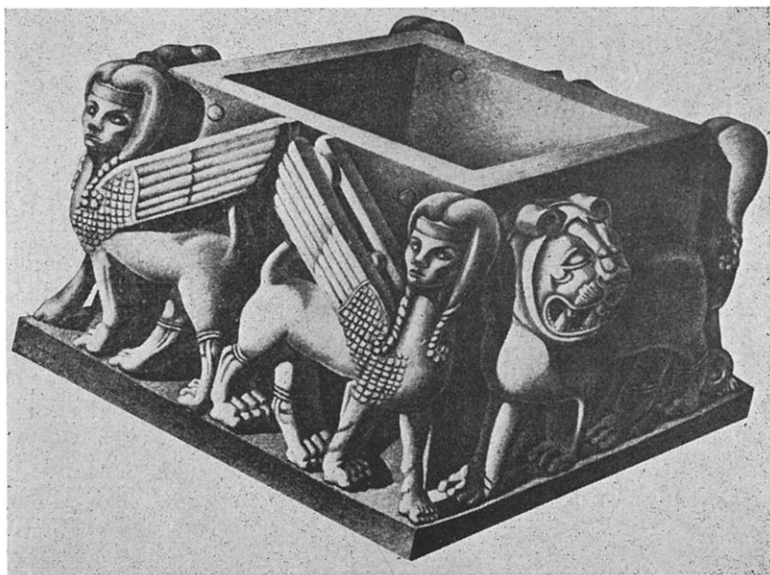


Fig. 5. Restoration of a small ivory box from Megiddo, dating about 1200 B. C., decorated with lions and cherubs. Note the restored heads of the latter which show a common way of fixing the hair. (Oriental Institute, University of Chicago)

no provisions for her during his life must be supported by her sons; if she was a second wife and has no sons, the sons of her husband must provide for her (AL parag.46). In an ordinance dealing with the case of a widow who lives in her father's house, the law prescribes that her father-in-law may give her as a wife to one of his other sons, but if the father-in-law is also dead, the woman is declared to be a "widow" (*almattu*), that is, she is free to do with herself as she pleases (AL parag.33). Thus the Assyrian law regards a married woman free to remarry only when both her husband and her father-in-law are dead. It would seem that an Assyrian widow received nothing of her husband's estate.

From a legal point of view the position of the widow in Palestine seems to have been even more pitiful than that of the widow in Assyria. Later Mishnaic law prescribes that a widow shall be supported by her sons,<sup>20</sup> but Biblical law makes no provision for her. When Abigail, the widow of the rich Nabal, came to David she brought along with her five maids and the ass on which she rode (I Sam.25:42). These were apparently her dowry which she had brought with her when she married Nabal and as such was her private property. The numerous references to the widow in the law codes and in the prophetic literature show clearly how miserable her position was. She is classed together with the orphans and the poor, she is economically helpless (cf. II Kings 4:1 ff.), and as a result the demand that mercy be shown her is repeatedly stressed (Ex.22:21; Dt.10:18; Isa.1:17, etc.).

### III. WOMEN AND CHILDREN

Women, married and unmarried, took an active part in the economic life of Babylonia. They participated freely as hired workers in agricultural and industrial establishments and the weaving industry seems to have been almost entirely in their hands. Also other skills and professions were open to them and in one case mention is made of a woman scribe.<sup>21</sup> They could acquire property and dispose of it (Hammurabi code parags.39,151-152), appear in court as litigants and witnesses, and adopt strangers as "sons" and "daughters." Their ability and trustworthiness was recognized by the government and in the absence of an officeholder his wife was entrusted with the management of his fief (parag.29). Women played an important role also in religion. The Hammurabi code lists a number of priestly female orders some of which were of high religious standing. Thus having economic and religious freedom, the dignified social standing of the Babylonian woman had no equal in the Ancient Near East.

If we are to take the Middle Assyrian laws as a mirror reflecting the true position of the Assyrian woman, one would be forced to conclude that her position was worse than that of a beast of burden. As a girl she was under strict control of her father and as a married woman under the merciless power of her husband. If she committed a crime her husband was her judge and executioner (AL parag.59). Furthermore, an Assyrian woman was held responsible for the misdeeds of her husband; his sins were visited upon her. Thus if a man strikes another man's wife and thereby causes a miscarriage, his (the offender's) wife is treated in the same manner (AL parag.50). That is to say, as he has deprived the other man of his child, so shall he be deprived of his. The offender's wife and the unborn child are of no concern to the law. The whole thing is viewed from the point of property alone. Equally, a married man who seduces a virgin must

20. Ketubot, XI, 1.

21. UAZP 288.

surrender his wife to the victim's father to be treated in like manner (AL parag.55). The wretched position of the Assyrian woman is further emphasized by the fact that she had to go around veiled in public (AL parag.40; only slave girls and prostitutes were exempt from this law). In the Late Assyrian period the situation must have changed considerably. We find women engaged in business and possessing property.

While a recital of the position of the Hebrew woman according to the law paints a gloomy picture of her legal and economic status, her social and religious standing came very near that of the Babylonian woman. For only social and religious freedom could have produced

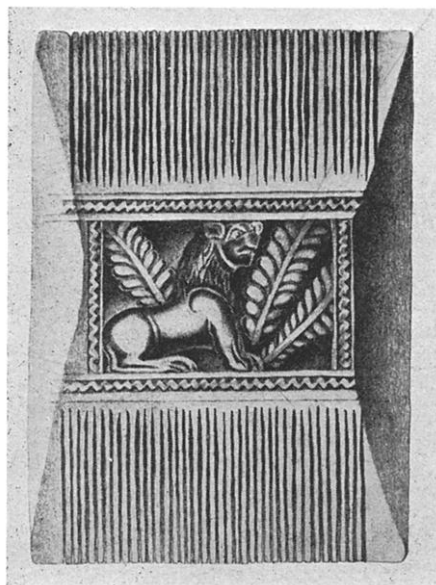


Fig. 6. Restoration of an ivory comb from Megiddo, dating about 1200 B.C. (Oriental Institute, University of Chicago).

women of the type of Miriam, Deborah, Jael, and Huldah. Women had access to the shrines as worshipers and took part in various religious gatherings (cf. I Sam.1; 2:19; II Sam.6:19; II Kings 4:23). They brought sacrifices in their own name and performed acts pertaining to sacrifice (cf. Judg. 13:15-23; Lev. chapters 12,15; Jer.7:18;44:15 ff.). Deuteronomy provides for the participation of women together with their husbands in religious festivals and their partaking in the sacrificial meal (12:12,18;14:22-29,etc.). Furthermore, a woman could take the nazirite vow (Num.6:2ff.) and join the priestly order of *qedeshot*. As mother the woman's position was equal to that of the father. A son who strikes or curses his father or mother is liable to the death penalty

(Ex.21:15,17; Lev.20:9), and the Decalogue demands the honoring of parents as a religious duty (Ex.20:12; Dt.5:16).

The goal of marriage is children, preferably sons. The Psalmist expressed this view succinctly when he said: "Like arrows in the hand of the warrior, so are the children of one's youth. How happy is the man whose quiver is filled with them" (127:4-5). The customary blessing bestowed upon a bride was: "May you become (the mother) of thousand myriads!" (Gen.24:60). A child bearing woman is a boon. In a society based on small-scale agriculture where the family constitutes a self-sufficient economic unit each child is welcome as an addition to its labor strength. In Ancient Babylonia this need for labor power produced the institution of adoption. Usually it is childless couples who resort to adoption in order to satisfy their cravings for children denied them by nature. But this was not always the case in Ancient Babylonia. From the so-called Sumerian Family Laws,<sup>22</sup> from parags. 185-193 of the Hammurabi code, and from the rather large number of adoption contracts it is very clear that the underlying cause of most of the recorded cases was economic in character. It was a desire on the part of the adopter to acquire cheap labor and security in old age. The following document is an example of an Old Babylonian adoption contract:

Immertum by name, daughter of Ublatum and Shep-Sin, from Ublatum her mother and Shep-Sin her father, Lamassum, daughter of Inib-sharri, has adopted as her child (and) appointed her as heiress. If Immertum to Lamassum, daughter of Inib-sharri, "you are not mother" say, she shall sell her for money. And if Lamassum, daughter of Inib-sharri, to Immertum (her) daughter, "you are not my daughter" say, she shall forfeit whatever she possesses.<sup>23</sup>

The adoption transaction was a business deal made and agreed upon by the two parties concerned for their mutual economic advantage. The two parties signed an agreement according to which each of them took upon himself definite obligations and responsibilities. The "son" or "daughter" was to provide for his "father" and/or "mother" as long as they lived and the adopter promised to leave his "child" a share of the inheritance after his death. Like any other business transaction, the adoption contract also contains a penalty clause against a one-sided dissolution of the agreement. If the "parents" break the agreement by saying, "you are not my son," they lose whatever they possess, and if the "son" breaks the agreement by saying, "you are not my parents," he is sold into slavery. From the few adoption contracts that have come down to us from the Middle Assyrian period (1500-1200 B.C.), it is quite

22. MSL pp.99-101.

23. Yale Oriental Series, Babylonian Texts, vol. VIII, no. 149.

24. Cf. M. David and E. Ebeling, *Assyrische Rechtsurkunden*, nos. 2,3.

25. Cf. S. I. Feigin, "Some Cases of Adoption in Israel," *Journal of Bib. Literature* 50 (1931), pp.186-200.

26. See note 19.

27. Cf. C. J. Gadd, "Tablets from Kirkuk," *Revue d'Assyriologie* XXIII, no. 5.



clear that what has been said about Babylonia was also true in Assyria.<sup>24</sup> Very few adoption contracts are known from the Late Assyrian and the Neo-Babylonian periods. The reason for the scarcity of adoption transactions in these periods probably lies in the fact that, with the exception of real adoptions because of childlessness, adoption as a means of securing cheap and reliable labor had ceased to be a profitable investment. The increase in the number of slaves at that time provided the market with a large supply of labor; adoption had outlived its economic usefulness and hence its practice was discontinued.

There is only one reference to a possible adoption of a stranger in the Old Testament. This is the case of the slave Eliezer whom Abraham contemplated to manumit and then to adopt in case he should remain without issue of his own (Gen.15:2-3). On the other hand, Jacob's adoption of Ephraim and Manasseh (Gen.48:5), and the adoption formula in Ps.2:7 "You are my son, this day I have begotten you," show that the institution of adoption was known but perhaps not widely practiced in Palestine.<sup>25</sup>

Since daughters marry strangers and thereby cut themselves off from their family, only sons inherit the paternal estate. It is they who perpetuate the family name (cf. II Sam.14:7), and preserve the ancestral property. According to the Hammurabi code daughters are entitled to a dowry but nothing else from their father's estate. The only exception to the rule is made in the case of a Marduk priestess who had not received a dowry during the life of her father (cf. parags.176-184). Sons of a free-born concubine were eligible to share in the inheritance (cf. parag.137), but sons of a slave concubine were not unless the father had adopted them during his life time (parags.170-171). According to a Neo-Babylonian law, sons of a first marriage take two-thirds of the inheritance while those of a second marriage take only one-third.<sup>26</sup> According to the Assyrian law, the eldest son is entitled to a double share of his father's estate (AL Tablet B, parag. 1). This custom was also in use among the Hurrians in Nuzi.<sup>27</sup> Sons of a concubine inherit only when the first wife has no sons (AL parag.41).

This principle that daughters do not inherit is maintained in the Old Testament even in the exceptional case of the daughters of Zelophehad. The decision laid down was that where there are no sons, daughters inherit provided they marry men of their father's family (Num.27:1-11;36:1-2; see also I Chron.23:22). It would seem that sons of a concubine are entitled only to gifts from the estate but not to a share of the inheritance (cf. Gen.25:6). Sons of a slave concubine inherit if they were adopted by their father during his life time (cf. Gen.30).

In summing up what has been said concerning the various family types in the Ancient Near East, three points stand out which are characteristic of all of them, the divergencies in time and place not-

withstanding. These are: (1) Marriage serves primarily as a means of begetting legitimate children; love and sexual satisfaction have their place, of course, but they are subordinated to the main purpose of securing offspring. (2) The father is the center of gravity in the family; he is the *baal*, the provider and protector of his wives and children. And finally (3), a woman attains the highest station in life when she becomes a mother; while the father represents power and authority, the mother personifies love and affection. Motherhood is the glory of the woman, for it is only then that she becomes a *berakhah* "a blessing" (Gen. 49:25).

## Archaeological News and Views

The excellent article by Dr. Mendelsohn on the ancient family, as known from the law codes especially, is one of the best brief summaries of the evidence of which the Editor is aware. It is to be noted that Israel did not make any radical changes in ancient marriage custom. As among other contemporary peoples, Hebrew marriage was a civil affair, a transaction between two families which was sealed by a covenant and the presentation of gifts. As Dr. Mendelsohn points out, Israelite law took polygamy for granted. It should be noted, however, that the Old Testament seems to go out of its way in certain instances to describe the trouble a man gets into when he obtains more than one wife! Jacob and Elkanah are examples, as is also Abraham, though the latter's home was not typically polygamous, possessing instead a wife and a concubine. The example of Solomon appeared to later people as so bad that Deuteronomic law, whether obeyed is another matter, prohibited the king from multiplying wives to himself "that his heart turn not away" (Dt. 17:17)!

More important is the fact that religiously monogamy, not polygamy, was the ideal, at least for certain thinkers. In the 10th or 9th century creation story monogamy seems to be envisaged as ordained by God: "they shall be one flesh", that is, they shall be as one person (Gen. 2:24). From a similar religious point of view Malachi roundly condemns divorce as a violation of God's will; it is God who is the witness of the marriage covenant with "the wife of thy youth," and God hates divorce (Mal. 2:14-16). This is the background to which Jesus appealed when he was asked about divorce. As to the law on the subject in Deut. 24:1-4, Jesus says that it was given for the hardness of people's hearts; that is, it was an accommodation to the imperfections of human nature. (And as Driver says, it is true that the Deuteronomic law does not institute divorce, but attempts to limit it and preclude its abuse.) But, continues Jesus, there is a higher law to be found in the creation story. He quotes Gen. 1:27 and 2:24 and concludes in the spirit of Malachi: "What therefore God hath joined together, let not man