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## THE WESTMINSTER ASSEMBLY AND ITS WORK.

The "Westminster Assembly of Divines" derives its name from the ancient conventual church of Westminster Abbey, situated in the western district of the county of London. It was convened in the most ornate portion of this noble fabric, the Chapel of Henry VII, on the first day of July, 1643; but, as the cold weather of autumn came on, it was transferred (October 2nd, 1643) to a more comfortable room (the so-called "Jerusalem Chamber") in the adjoining Deanery. In that room it thereafter sat, not merely to the end of the 1163 numbered sessions, during which its important labors were transacted (up to Feb. 22, 1649), but through some three years more of irregular life, acting as a committee for the examination of appointees to charges and applicants for licensure to preach. It ultimately vanished with the famous "Long Parliament" to which it owed its being. The last entry in its Minutes is dated March 25th, 1652.<sup>1</sup>

The summoning of the Westminster Assembly was an important incident in the conflict between the Parliament and the king, which was the form taken on English soil by the ecclesiastico-political struggle by which all Europe was

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<sup>1</sup>In the ordinance convening the Assembly, it is commissioned to sit "during this present Parliament, or until further order be taken by both the said houses".

## MARRIAGE AMONG THE EARLY BABYLONIANS AND HEBREWS.\*

The discoveries in the realm of Assyriology have been of too wonderful a character for their full significance to be easily and quickly grasped. To have our historical horizon suddenly pushed back several millenniums is in itself startling; but to know that in the third millennium before Christ, and perhaps earlier, there was a highly developed complex civilization, comparable in many respects to our own, in the valley of the Euphrates, and also of the Nile, is to realize that it will be many years before we have adjusted our historical sense to this new knowledge. The first feeling on examining the remains of these ancient peoples—the few fragments of their art that have come down to us, and especially their literature, with what it reveals of an active, virile and cultured people—is that of simple amazement that such things could have been and then have vanished completely. And when in turn we consider, as we are forced to consider, our own much vaunted position as the “heirs of all the ages in the foremost files of time”, we are compelled to ask ourselves whether our civilization, too, may not, after all, go the way of these former ones, and the time come “when London shall be a habitation of bitterns, when St. Paul and Westminster Abbey shall stand shapeless and nameless ruins in the midst of an unpeopled marsh, when the piers of Waterloo Bridge shall become the nuclei of islets of reeds and osiers, and cast the jagged shadows of their broken arches on the solitary stream”.

The latter years of the Assyrian Empire were long considered the Golden Age of Assyrian and Babylonian culture.

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\* The substance of this article was delivered as a lecture at the Grove City Summer School, August, 1907.

This view, however, has to be given up. The famous library of Ashurbanipal consists largely of duplicates of older Babylonian texts, and the glory of his time is to be regarded, at least as far as culture is concerned, as only a renaissance. Whence this wonderful literature came we do not know, not even whether it was original with the Semites or obtained by them from their predecessors in the valley of the Euphrates, the so-called "Sumerians". But in our search for a period in which were wedded the originality and energy required to produce such works, we are arrested at that of the so-called "First Dynasty" of Babylon. It is with this period that we have to deal more particularly in this article. This dynasty reigned in Babylon for about three centuries at the end of the third millennium before Christ. The best known and most powerful of its number was Hammurabi, the sixth of the eleven kings who are included in it. From it we have a large and rapidly increasing number of documents, both official and private. They picture to us a land intersected with frequent canals, bearing vessels laden with corn, oil, dates, wine, and numerous other products; a fertile and well cultivated country, a well established and efficient administration (at least under Hammurabi), and a complex civilization with different grades in society, trade highly developed, a monetary system (possibly stamped coins), companies of traders, guilds of workmen, agencies, and perhaps even a postal system.

By far the most important single document of this period is the code of laws promulgated by Hammurabi. Rarely, if ever, has such an important "find" been made in the realm of archæology. Published over two thousand years before the Code of Justinian, we find in it the human mind working exactly as to-day, the same sense of justice, responsibility, and back of it the same humanitarian principles. Hammurabi's statement that he was appointed by the gods "to spread abroad justice in the land, to destroy the evil and the wicked, and to prevent the strong from oppressing

the weak" is quite consonant with the terms of his code. The resemblance to modern law is seen chiefly in the sections referring to property. For instance, concerning mortgage it is enacted that if a man borrow money, and promise the lender in return the whole produce of a field, the lender at harvest time shall not be allowed to take more than will cover the original debt with interest and the cost of cultivation (§ 49). Or again, if a widow with children under age wish to marry again, she must first obtain the consent of the authorities, who may then make her and her second husband co-trustees of the first husband's estate in the interest of his children (§ 177). Both laws, it will be seen, sought the protection of the weak and helpless, and both are to be found in modern statute books.

That this code of laws was the first to be given to those peoples is very doubtful. Their form and their grouping would alone suggest that we have here not the first attempt at formulating laws or codifying them. Moreover, there have come down to us fragments of another code, differing in many points from that of Hammurabi and mirroring apparently an earlier stage of development. A characteristic of these fragments is that they are bilingual, one column being written in the language of the pre-Semitic Sumerians, the other in Babylonian. This in itself is strong evidence for their priority. One thing of which Hammurabi boasts is that he has made known his laws "in the language of the country",<sup>1</sup> and for this, perhaps, he deserves more credit than for originality. Whether or not, however, it had codified statutory law before the time of Hammurabi we can by no means regard the country as lawless. Private legal contracts dated centuries before his time show us a system of judges and judicial administration in the individual towns far from primitive, and still earlier literature and remains warrant us in saying that the cities

<sup>1</sup>Accepting Lyon's explanation of *ina pi* (KA) *matim*, J A O S. XXV, p. 269.

of Babylon in the time of Hammurabi may have looked back on a past as old as that of London to-day.

One thing noticeable in the private contracts of earlier and contemporaneous literature is that frequently they are not in accord with the provisions of Hammurabi's code. This has long been noted and commented upon, and recently Professor Meissner has put us all under obligation by collecting and translating (some for the first time) a considerable number of contracts confirmatory of this fact.<sup>2</sup> The possibility and reason of this is seen when we consider the constitution of Babylonian society and the warring, or at least the un-united elements contained in it.

The unit of society in Babylon was the family, at the head of which stood the father. To what extent the individual family was subordinate to the gens or clan we do not know. Laws and contracts of all times point to a time in the past when the power of the father was absolute. Wives and children, as well as slaves, were his property, to dispose of as he wished. He bought his wife or wives, and he could divorce them by simply saying, "thou art not my wife", or sell them and their children as any other property. In case of their disobedience he could put them to death. All dealings with outsiders were, of course, conducted in his name. He bought what property was needed for the growing family, or slaves or wives for his sons and himself. He also sold and gave his daughters in marriage, sold property or slaves, etc. In short, he was patriarch in the full sense of the word.<sup>3</sup> It is not meant that this condition of affairs existed in historical times; it lies long before the period of which we have definite information; but it left its impress upon the customs and laws of the Babylonians even to the latest day. The historical reconstruction of the period lying between that of the absolute

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<sup>2</sup> *Assyriologische Studien*, III. 1905, in the *Mitteilungen der Vorderasiatischen Gesellschaft*.

<sup>3</sup> Some would find traces of a still earlier matriarchate, but the discussion of that is not proper to this article. Nor is it our purpose to speak of the religious position of the father.

patriarchate and that of the much later city civilization is not yet possible. This much, however, we may affirm: that when several families were grouped together for geographical reasons, mutual defense, or religious purposes, a new social unit was formed, the common interests of which necessarily encroached upon the absolute power of the father, and in which the customs of the several families would tend to become (if they were not already) very similar, if not identical. And indeed we find that much of the Babylonian legislation, as well as that of other peoples, is concerned with more accurately defining the rights of the father and the members of the family on one hand and that of the town or state on the other. Hand in hand with the progress of such communal or city life went such things as division of labor, freeing of slaves, centralization of cultus, rise of the priesthood as a special class with special rights, change in the position of women, judges, courts of law, etc., all of which would of necessity react upon the authority of the father in his own family. The state of affairs was still further complicated in earlier times by the presence of people who had preceded the Semites in the valley, and who had been either conquered or assimilated, or both, and in later times by the foreigners of different nationalities who sojourned in, or travelled through the land, as well as by the active intercourse between Babylonia and other countries. From very early times there must have been a considerable number of residents unattached to families.

In the third millennium before Christ southern Babylonia was filled with small towns, the inhabitants of which, although of more than one race, had more or less the same customs and language, or rather languages,<sup>4</sup> and were otherwise united by trade, commerce, travel, and those things which are common to people inhabiting one district and having in the main the same interests. Still, each of these towns had its own organization, its king, judges, and temple,

<sup>4</sup> The Sumerian was being gradually supplanted by the Semitic Babylonian.



and, we must conclude, differed from the others in customs, at least to some extent. They made war upon each other and occasionally one would subdue several others. This was the state of affairs when Hammurabi succeeded in uniting a large number of them under his own sway. In his historical inscriptions and letters<sup>5</sup> we can see with what zeal he set about the task of making one united empire out of these, to some extent, heterogeneous elements. He built new canals and cleared out old ones, he was in constant communication with his governors in the various towns, soldiers and officials passed constantly to and fro on the imperial business, he revised the decisions of the judges, and at times called a case to Babylon for trial. It is in the light of this that we must view the code of laws promulgated in his reign. His task was not easy; there were the customs and rights of the individual, the family, the town, and the empire to be considered. If different customs or laws prevailed in different sections of the country they had to be brought into conformity, and, above all else, it is clear that the interests of humanitarianism and mercy were not neglected. The position of the slave, the borrower, the debtor, and all unfortunates was, as far as we can see, essentially bettered by his legislation.

His purpose, of course, could not be accomplished at once; old customs and old recognized rights were too deeply rooted in the consciousness of the people to be lightly set aside, and to this we must doubtless ascribe the peculiarity mentioned before, that many of the contracts of this period do not conform to the requirements of the code. How far the primitive right of the father had been already modified and curtailed by custom or legislation we cannot say, but Hammurabi, even if such a thing had occurred to him, would have been unable to take away his powers entirely. This is well illustrated by one section (129) of the code. It is enacted that if a wife be taken in adultery with a man, the two shall be thrown into the water, "provided that the

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<sup>5</sup> Published by L. W. King, *Letters and Inscriptions of Hammurabi*.

husband may save his wife and the king his servant". In this case the husband stood in the same relation to his wife as the king to his subject. Similarly, the right of a father to sell his wife and children in case of debt is not disputed, but it is enacted that they shall serve only three years (§ 117). A father has the right to disinherit a son, but he must first get the approval of the authorities (§ 168f.), and even then he shall not cut him off until he have twice committed an offense worthy of such punishment. However, the code does not hesitate to fix the penalty for unfilial conduct on the part of a son, or to interfere in other respects in the relations of father and mother to their children, adopted children, and slaves. The family as a self-contained independent unit had already long ceased to exist.

It will not be possible for some time yet to give a satisfactory picture of the social and economic conditions in old Babylon. As yet we have only its main outlines and are attempting here and there to sketch in a few details. In this article we wish to speak more particularly of some of the marriage relations as they are portrayed to us in the literature of the time, and to compare these with the stories of the early Hebrew patriarchs. In the first place, it is to be remembered that we are not dealing with a time when women were mere chattels or confined to a harem. The high position occupied by woman in the days of Hammurabi has astonished everyone. It is true that they do not appear in the contract literature as often as men, but still they seem to have been endowed with as many, or almost as many, rights as their brothers. They could be parties to a suit; could hold, buy and sell land, houses, slaves, etc., adopt children, act as scribes, and in one instance we know of a woman acting as judge.<sup>6</sup> Indeed, judging by this kind of

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<sup>6</sup> Bu. 91-5-9, 327 C. T. VIII. Translated by Schorr, *Altbabylonische Rechtsurkunden*, No. 5. As, however, the woman was also the scribe, she may be only formally entered among the judges.



literature, it is easier to affirm than to deny that they held equal rights with men.

A man might have concubines. We have no means of knowing whether their number was limited or not. Most probably it was restricted only by the man's wealth or inclination. The concubine was a slave,<sup>7</sup> as her name (*amtun*) implies. Only in case she bore children to her master (*bêl amtim*) did she acquire additional dignity and rights. The sections of the code dealing with her position are the following:

§ 119. If a man be in debt and he sell for money his maid who has borne him children, the money that the merchant (buyer) paid may (shall)<sup>8</sup> the owner of the maid repay and so ransom his maid.

§ 170. If a man's wife bear him children and also his maid bear him children (and) the father during his lifetime say to the children that the maid has borne him "my children", reckon them among the children of the wife,<sup>9</sup>—after the father go to (his) fate (*i. e.* die) the children of the wife and the children of the maid shall share equally in the goods of the father's house. The son who is child of the wife shall divide (?) and take (first share) in the division.

§ 171. And if the father in his lifetime have not said "my children" to the children which the maid bore him, after the father go to (his) fate the children of the maid shall not share with the children of the wife in the goods of the father's house; freedom shall be assured<sup>10</sup> to the maid and her children; the children of the wife shall have no right to claim the children of the maid for slavery.

Although these sections seem perfectly clear, too much must not be read into them. The last two deal only with

<sup>7</sup> The Babylonian, unlike the Hebrew, did not have separate words for concubine and slave.

<sup>8</sup> Either translation is permissible. In the former case the maid is protected from the buyer, who may not resell her (cf. § 118); in the latter she is protected from her first owner, the father of her children, who must keep her in the family.

<sup>9</sup> For cases in which the father adopted such children see A. S. III, p. 55f.

<sup>10</sup> Reading *ishshakan*.

the case of a man who has children by *both* his wife and his concubine. What claims the children of the latter would have in case there were no children by the wife is not evident. In other words, these sections do not aim to set forth the legal status and rights of maid and children, but these are only incidentally mentioned in the laws governing inheritance.<sup>11</sup> They do show, however, that in case a man had concubines, and children by them and also by the free wife, the former are not legal children of the free father unless he formally adopt them, for that is the meaning of the expression "if he say, my children". But more than this, we see in these three sections evidently an attempt on the part of the lawgiver to ameliorate the condition of such a maid and her children by enacting (1) that the maid who has so borne children may no longer be treated as the other slaves (§ 118)—as a mere chattel—but must be maintained in the house, and (2) that she and her children must be given their freedom on the death of the father-proprietor, even though the children have not been adopted. The phrase "the children of the wife shall have no right to claim them for slavery" can be no empty repetition, but must owe its prominent place to the frequency of attempts on the part of the legal heirs to keep the maid and her children in the position they had occupied before the father's death; or perhaps we should regard the enactment as new. While we have no right to assert positively that in all cases the children took the same rank as the mother, this would seem to have been the case. In favor of this are the sections just quoted and the other enactment that the children of a slave father and free woman are themselves free (§ 179).

But if it is clear in the case of the slave girl that the tendency was to make her position more easy, much more may we affirm it of the married woman. We shall see that both custom and legislation unite in an endeavor to lift her from the position of dependence on her husband, her family

<sup>11</sup> Cf. Lyons, J A O S. XXV, p. 251f.

providing for her by dowry, and law and contract limiting the husband's right of divorce. Concerning the relations of a man to his legal wife<sup>12</sup> we have some definite information. When a man wished to take a wife he must bring

<sup>12</sup> According to some scholars the code distinguishes four kinds of wives—the free wife (*chirtum*), the concubine (*shugetum*), the votary wife (SAL + DIS, the Babylonian equivalent is not sure), and the slave wife (*amtum*), see e. g. Lyons, J A O S. XXV, p. 259. Besides these the word *kallatum* denotes the wife between the time of betrothal and marriage (*Braut, fiancée*), and *ashshatum* properly "woman" is used as a general term for wife whether before or after marriage, free or slave (it is used of a slave wife in Bu. 91-5-9, 374, C T. VIII). This fourfold distinction, however, cannot be certainly affirmed as yet. *Chirtum* denotes the legal wife undoubtedly; but "concubine" is not a good rendering of *shugetum*. Her position, as we shall see later, was closer to that of the *chirtum* than that of slave-wife. The etymological meaning of the word is unknown; there seems no satisfactory Babylonian explanation for it. Moreover, it is doubtful if the word describes the woman as a wife only. In § 184 it is used of one who is neither married nor betrothed, but who is looking forward to becoming a married woman. As a married woman the *shugetum* is expected to bear children herself. In § 144f. a man is allowed to take in addition to his wife a *shugetum*, only in case he has no children; and in § 137 she is distinguished from the SAL + DIS in that she is supposed to have borne children herself (*uldushum*), whereas the latter may provide her husband with children some other way (*usharshushu*), of which we shall speak later. Taking all these things into consideration, it seems best to regard *shugetum* as meaning a mature, marriageable woman, and as such to derive it from the Sumerian SHU-GE, a term frequently applied to animals of both sexes and rendered provisionally by "old" (Reisner, *Tempelurkunden aus Telloh*, p. 35; Radau, *Early Bab. History*, p. 370, et al.), of which SHU-GI = *shêbu* is only a variation. The term then has no reference to the legal position of a married woman as secondary wife or concubine, but to her age and the end for which she is brought into the man's house, namely, childbearing.

The ideogram SAL + DIS, which Lyons and Johns would render "votary wife", is by others regarded as equivalent to the general term *ashshatum* (Scheil, Harper, Müller, Kohler und Peiser, Winckler, Davies). In spite, however, of the majority to the contrary, the former view is not to be lightly disregarded. There is another well-known ideogram (DAM) for *ashshatum* (found in the code B III, 57), and that there should be two for the same word is not probable in a document as carefully written and as exact as the code. The ideogram SAL + DIS is used: (1) before the names of gods, and denotes in such passages evidently priestess (e. g. B XV. 93, SAL + DIS (*il*) *Marduk* = priestess of Marduk), and so also in the other literature of the time;

or send to the father of the girl a present (*tirchatum*),<sup>13</sup> which, for want of a better name, we may call the "bride-money". This present varied in amount, of course, according to the means of the groom's family. In one contract it was ten shekels (MAP. No. 88), in another one shekel (MAP. No. 92); indeed, it might be lacking altogether, and such a case is contemplated by the code of Hammurabi (§ 139); but the custom was a strong one, and it is even provided in the code that, should a father die before his youngest son is married, the brothers shall give their young brother a portion from the goods of the father's house, over and above his regular share, to be used as bride-money in procuring himself a wife (§ 166). Still, that this custom had long lost its primitive significance of buying the bride, and was regarded, sometimes at least, as a mere formality, is evidenced by the fact that the bride-money might be returned with the bride as part of her dowry (Bu. 88-5-12, 10; CT. VIII), and also by the smallness of the sum given. The bride-money paid for a daughter of the king Ammiditana<sup>14</sup> was only four shekels.

(2) without the name of a god, in which case it refers either to a married wife, or to a class of women whose status we cannot with our present knowledge definitely determine, but who were the subject of special legislation, and frequently associated in the laws with women attached to the temples. The word *walâdu*, "to bear children", is never used of the SAL + DIS wife. There is therefore some ground for Lyons' statement that this ideogram, when used of a wife, denotes a "votary wife" "who seems never to bear children". He suggests by way of explanation that "she was perhaps in the service of the temple until she passed the age of child-bearing and was then free to marry. One might compare the vestal virgins at Rome, who were also free to marry after thirty years of service" (J A O S. XXV, p. 259).

With this would agree the account of the marriage of Lamazatim, priestess (SAL + DIS) of Marduk, to Ilushu-bani, on the occasion of which she took with her as part of her dowry her sister Suratum(?) to be *shugetum* (Bu. 88-5-12, 10; C T. VIII; translated in part by Meissner A. S. III, 66).

<sup>13</sup> Besides the bride-money there were apparently other presents, for it is commanded that in case the groom break the engagement he shall forfeit "*whatever* has been brought" to the father-in-law (§ 159).

<sup>14</sup> Bu. 88-5-12, 193; CT. VIII. The published text reads *Ammiditana*

How far the wishes of the bride were consulted in the engagement cannot be definitely determined. On the one hand it is stated that the father gave the bride to her husband (*e. g.* § 183f. and frequently); on the other it is said of a widow, a divorced woman and a betrothed bride who has been violated by her prospective father-in-law "the man of her choice (heart) may marry her" (§§ 137, 156, 172). As the legal expression "to give a bride" might persist, along with the accompanying formality, long after its original significance (the absolute power of the father in the family and the sale of daughters), had died out, and as it is expressly stated of all except maiden brides that they might marry the man of their choice, and as women in other respects occupied such a free position, we cannot be far wrong in thinking that a considerable degree of freedom was allowed to a girl, in this matter of so much importance to herself. To ascribe to the early Babylonians the marriage customs of modern and mediæval town Arabs and Turks is certainly unwarranted.

The engagement thus formed might be broken by either the groom or the bride's father. In the former case the groom forfeited whatever he had sent to the prospective father-in-law's house (§ 159); in the latter the father of the girl must return double the amount received (§ 160). A still more interesting and very human law is that which provides that if a friend slander the prospective bridegroom, so that the girl's father refuse to give him his daughter, the father-in-law shall return double what has been brought to his house, and the slandering friend may not marry the girl (§ 161).

As soon as the betrothal was completed the girl was called the wife of a man. During the period that elapsed between the giving of the bride-money and the marriage she might live in her father's house (§ 130), or in that of her

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*sharrum* as the father's name; Ranke, however, reads *Ammia*, (*Early Babylonian Personal Names*, p. 65).



prospective father-in-law or husband (§§ 141,<sup>15</sup> 151, 156).

When, however, she came to dwell in the house of her husband, she came also under his authority. If she proved foolish and neglected the house and her husband,<sup>16</sup> he might do either one of two things: he might send her away without giving her anything for her divorce, or retain her in the house as slave and take another wife (§ 141). In case all went well, however, the bride formally "entered the man's house", they were married and set up for themselves.<sup>17</sup> Of the rites and ceremonies connected with the marriage we know little. A marriage contract was required by law (§ 128), several of which have come down to us, with the names of the contracting parties, the conditions attached, of some of which we shall speak later, and the names of the witnesses.

The bride usually brought with her from her father's house a dowry (*sheriqtum*). This, like the bride-money, might be omitted (§ 176), and, of course, its amount varied according to the wealth of her family. The code contemplates a case where the dowry is larger than the bride-money (§ 164), and such was probably usually the case. The inventory<sup>18</sup> of several dowries has come down to us, and from them we learn that the bride received from her father's house such things as real estate, slaves, money in gold and silver, articles of personal adornment, clothing and household utensils.

This dowry was not merged with the property of the

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<sup>15</sup> The expression *ashshat awelim sha ina bit awelim washbat*, "the wife of a man who dwells in the house of a man", appears to refer to the period of betrothal. See particularly § 151, where a contrast between the man and wife is referred to, which must have been antenuptial. Only after the woman had formally entered the house of her husband (*ana bit awelim erêbum*) was she fully his wife (§ 152).

<sup>16</sup> This seems to be the meaning of the original.

<sup>17</sup> *Innemdu*.

<sup>18</sup> Bu. 88-5-12, 10; CT. VIII; probably Bu. 88-5-12; 229 in MAP. No. 7; Scheil. *Une Saison de Fouilles a Sippar*, No. 10, p. 98, and others.

husband, but remained distinct. If she died childless it returned to her father's house (§§ 163, 164), but if she had children it belonged to them (§ 162). If a man had two successive wives and each of these had children, after the man died the whole estate was not lumped, but the children received the dowries of their respective mothers, and all shared alike in the estate of the father (§ 167). If a woman had children by two successive husbands, when she died, her children, irrespective of fatherhood, shared her dowry (§ 173).<sup>19</sup> If the husband divorced the wife she received her dowry (§§ 137, 138, 142), likewise if she preferred to leave his house when a second wife was introduced (§ 149).

The regulations concerning the dowry were actuated partly at least by feelings of solicitude for the personal welfare of the bride. Her parents followed her as well as they could into her new home by providing that she should not come to poverty; and they protected her—very much as modern parents—against both her husband and herself, in providing that neither he could get full possession of her dowry nor could she dispose of it. In this way she had a position of independence that she would otherwise have lacked. This same watchful care is evidenced in another way. If a wife make an agreement with her husband before marriage that a debtor may not seize her, she may not be seized for his debts *contracted before marriage*, similarly the man may not be seized for the debts of the wife (§ 151).

What became of her and her dowry in case her husband died leaving her childless is not clear. Did they remain in the husband's family, or return to her father's family, or was the woman free from family control in respect to personal actions or the control of her dowry, or both? There

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<sup>19</sup> Presents given to the wife by her husband were governed by the same law. She had the use of them while she lived, but after her death they went to her children (§§ 150, 171). If she preferred to leave her husband's house after his death, she might not take his gift with her, but must leave it with the children (§ 172).

would seem to be no evidence for the first of these. In favor of the second is the law that the dowry of a wife who dies childless shall return to her father's house (§ 163). The enactment that the widow *with children* has a right to live in the house of her husband and have the use of her dowry and what presents her husband may have given her, or failing this, a portion equal to that of one son, as long as she lives (§ 171), may also be regarded as implying that the childless wife had no such claims on the house of her husband. Priestesses, who received dowries also, but had no children, had only the life use of their dowries, unless otherwise specified in the deed of gift. At their death it returned to their brothers (§§ 178-181); an exception to this, however, is the law that the priestess of Marduk may dispose of her dowry and her share of the father's estate as she will (§ 182).

It will be seen, therefore, that the gift of a dowry with a wife had many strings attached to it; but we cannot be sure of the legal status of the wife herself in relation to her father's house and that of her husband up to the time she bore children. We must beware, however, of reading into the code the idea of the perpetual tutelage of women with respect to either personal or proprietary rights. It is true that, strictly speaking, according to the code the wife could not dispose of her dowry or the presents given to her by her husband. Until she had children the former belonged to her father's house; after that both belonged to her children. She had only the life use of them. This looks like tutelage. But we learn also, incidentally, that she could hold and sell property in her own name (§ 147). From this last fact, which is also apparently substantiated by private contracts (though it is difficult to say whether the "wife" there mentioned may not have been a widow), and because a widow at least could be a party to a suit (§ 172), and because of the high position borne by woman in general, it seems best to conclude that, whatever may have been the earlier usage, the woman of the time of Hammurabi, even when married,

as a matter of fact was not necessarily subordinate to her husband in business affairs.

In actual life the husband and wife seem to have worked harmoniously together and to have had almost equal rights and responsibilities. The husband was of course the head of the family and in case of need even his wife and children could be bound over for debt for the space of three years. He seems to have had the control of her dowry judging from the expression "he shall restore her dowry to her" (§ 149 *et al.*). They were however both responsible for debts incurred after marriage (§ 152), and the woman was given equal credit with her husband for all the property acquired during their married life (§ 176). So too in private contracts man and wife act conjointly not only in such family affairs as adopting children or giving presents to children but also in borrowing money or buying a slave.<sup>20</sup> They probably acted together in investing the wife's dowry.

It is when we come to the relation of husband and wife in respect to divorce that we see what a subordinate position the woman at one time occupied. But here too we can discern how custom and law were uniting in an endeavor to free the wife from the control of her husband and put her, if not on an equality with him, at least in a freer position than she had heretofore occupied. The husband had the right of divorce, the wife had not. Even the code of Hammurabi did not take this right from the man, but only restricted it. Provision was made, however, for the wife's leaving her husband in certain cases. Of *laws* earlier than the code of Hammurabi we can say nothing positively. But the bilingual series *ana ittishu* because written in Sumerian and also because of its content may belong to an earlier legislation or at least echo the ideas of an earlier time. In this we have the following provisions concerning divorce "If a wife hate<sup>21</sup> her husband and say 'thou art not my

<sup>20</sup> MAP. Nos. 7, 17, 94, 95, 97, *et al.*; *Leip. Sem. Stud.* I. Daiches, Nos. 23, 26.

<sup>21</sup> I have retained the ordinary translation of *zâru*, but it is not satis-

husband' they shall throw her into the river. If a man say to his wife 'thou art not my wife' (*i. e.* divorce her) he shall pay one half of a mana". According to this the wife was helpless. The power of divorce was entirely within the hands of the husband and he was restricted in its use only by his ability to pay the half mana divorce-money. When this law was promulgated we do not know. Also there may have been other conditions attached to it which have not come down to us. In any case we have probably to regard the injunction that the man, on divorcing his wife shall pay one half mana, as a restriction on the earlier custom whereby he could send her away at will without any provision whatever. It was therefore a great step in advance. Whether it came originally from the side of the government, or from the bride's parents we cannot be sure. In the time of the First Dynasty, however, we know that it was not in force, and, judging by the contracts we have, would not have been acceptable to many parents of the time. For we find the matter again in the hands of the contracting parties, and the conditions of divorce varying according to their respective position, wealth or influence. In some cases where the bride was a freed woman there is no fine or divorce-money spoken of. The man apparently may act as he will.<sup>22</sup> In another the sum for divorce was only ten shekels (one sixth of a mana, M A P. No. 90); in others it was one mana, and in one case the husband was to forfeit

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factory. The word is used both of the man's attitude toward the woman (VR. 24d, 54) and of the woman's toward the man (in the passage quoted and Ham. Code, B VII, 60, and CT. VI, 26, 12, quoted by Meissner A. S. III, p. 44). In the former case Meissner translates "*er mochte sie nicht*"; in the latter "*(wenn sie ihn) feindlich behandelt*". This is inconsistent. In the passages cited the word *izir* seems to imply not only hatred but also a desire for a separation (cf. also Ham. Code B XVII, 18). It seems, therefore, to be used technically in the sense of "desire a separation". In that case the use of *שנא*, "to hate", in the *Assuan Papyri* in the technical sense of "to desire a divorce" is a direct parallel, and there is no need to go to Egypt to find its origin (cf. Z. A. XX, p. 145).

<sup>22</sup> See the tablets quoted by Meissner, A. S. III, p. 42.



house and furniture if he divorced his wife.<sup>23</sup> This last provision makes divorce practically impossible. But the duty of the wife remained the same. If she wished a divorce or left her husband there was but one thing possible—she was punished by death.

It was while things were in this condition that the code of Hammurabi was promulgated, and by it the position of the married woman was materially bettered. If she desire a divorce (*isîr*) her case shall be examined by the authorities; if they find that she is without fault and her husband blameworthy, she is to receive her dowry and be free to go back to her father's house (§ 142). If on the contrary she is in fault she is to be thrown into water (§ 143). So strong was ancient custom! Wilful desertion on the part of the man dissolved the marriage tie. The wife was then free to marry another husband and the first husband if he returned had no claim on her (§ 136). If however the husband was captured and so forcibly kept from home, she was allowed to enter another house (i. e. marry again), only on condition that there was not maintenance in that of her first husband; but she must return to him if he come back (§§ 134, 135). The power of divorce, however, was not taken from the man; it was only regulated and restricted in the following manner.<sup>24</sup> If he put away a childless wife he must restore her dowry and give her besides a sum equivalent to the bride-money which he had given for her (§ 138); or in case there had been no bride-money the sum of one mana<sup>25</sup> (§ 139). In case she had children she should receive her dowry and a portion from the field, garden and goods of the husband; she should rear the children and after they were grown

<sup>23</sup> For this text, see p. 233.

<sup>24</sup> One writing of divorcement has come down to us: "Shamash-rabi has divorced Naramtum. She has taken her . . . she has received her divorce money. If another marry Naramtum Shamash-rabi shall make no complaint." M A P. No. 91.

<sup>25</sup> Those of a lower rank (*MASH-EN-KAK*) were required to pay only one-third of a mana.

receive an amount equal to that received by each of the sons, and was then free to marry again (§ 137). But he could not put her away on every cause at will. If he accuse her of adultery and the charge is not proved she may clear herself by oath and return to her house<sup>26</sup> (§ 131). If the charge be brought by another man she shall submit to the trial by water<sup>27</sup> (§ 132). If the wife of a man be apprehended in lying with another male they (*i. e.* the authorities) shall bind them and throw them into the water; provided that the husband may save his wife and the king save his servant (§ 129). If the wife of a man be ill and so incapacitated,<sup>28</sup> he may take another or second wife,<sup>29</sup> but he may not divorce the first. She may either be supported by her husband or return with her dowry to her father's house (§§ 148, 149). Naturally after the death of a first wife the man may take another (§ 167).

It is clear therefore that a man was allowed to take a second wife, during the lifetime of his first, only in certain rare instances. In a certain sense then the code was monogamistic. If, however, the first wife did not present her husband with children he was allowed to take a subordinate or secondary wife,<sup>30</sup> but it is expressly stated that she shall not rank with the first wife (§ 144). If on the contrary the first wife did present her husband with children the husband might not take a secondary wife (§ 145). This secondary wife was not a concubine. She came to her husband with a dowry from her father's house (§§ 137, 183,

<sup>26</sup> Almost undoubtedly the house of her husband; otherwise we would have "to her father's house", as elsewhere.

<sup>27</sup> "She shall plunge into the (holy) River for her husband." We do not know the details of the test. It would be an interesting study to ascertain in just what cases oath and trial by water were resorted to. In the Code of Hammurabi, which is remarkably free from superstition, they are allowed only where proof was, in the nature of the case, impossible.

<sup>28</sup> A definite illness, *la'abum*, is mentioned; its nature is unknown.

<sup>29</sup> *Ashshatam shanûtam*.

<sup>30</sup> *Shugetum*. See note, p. 220.

184), and the children she bore were the legal children of her husband (§§ 137, 145).

It will be seen from the foregoing that the possession of children was regarded as very important in ancient Babylon. If a wife did not present them to her husband she was in danger of having another wife introduced into the house—a very disagreeable position for the first wife even though the other was not legally of equal rank. Indeed this very enactment that “the *shugetum* shall not take equal rank with the wife” presupposes an unenviable condition of domestic affairs which this law was endeavoring to improve. If the wife died without children the dowry returned to her father’s house. And as far as we know, it was only when she had had children that she had a right to be supported in her widowhood by her husband’s estate, otherwise she returned to her father’s house or was thrown on her own resources. In a certain sense the marriage may be said not to have been fully consummated until there were children. It was therefore very important for a woman that she have children. Thereby one<sup>31</sup> ground of divorce would be removed, and she would have a permanent home of her own in case her husband died. Now in connection with this, and evidently to protect the wife there grew up in Babylon a strange custom that was afterwards sanctioned and regulated by the code of Hammurabi. A wife might present her husband with children in either one of two ways: either by bearing them herself or vicariously by giving her

<sup>31</sup> Meissner (A. S. III, p. 41) thinks that childlessness was the only ground of divorce. This he does by regarding only §§ 138-140 as divorce laws. That is, he excludes all those that deal with legal separation (as §§ 133-136, 142), accusations of infidelity (§§ 131, 132), and also with the divorce (by the man) of the secondary wife (*shugetum*) or votary wife (? SAL + DIS) (§ 137), or of the, apparently as yet, unmarried wife (§ 141). But even were the right to make such distinctions allowed, it is not clear that the phrase (§ 138) “if a man put away his wife (*chirtashu*) who has not borne him children” gives the *ground* of divorce any more than does the expression (§ 137) “if a man has determined to put away (a wife) who has borne him children”.

maid to her husband. In this way she might postpone the evil day of divorce or at least of the secondary wife. The sections of the code that deal with this are the following:

§ 144. If a man take a wife and that wife give a maid to her husband and bring children into existence,<sup>32</sup> (if) that man determine to take a secondary wife (*shugetum*) they (i.e. the authorities) shall not agree with that man. He may not take a secondary wife.

§ 145. If a man take a wife and she do not provide<sup>33</sup> children for him, (if) he determine to take a secondary wife he may take a secondary wife. He may bring her into his house. That secondary wife shall not take equal rank with the (first) wife.

§ 146. If a man take a wife<sup>34</sup> and she give a maid to her husband and she bear children, (if) afterwards that maid would make herself equal to her mistress, because she has borne children, her mistress may not sell her for money; she may put a fetter upon her and reckon her among the slaves.

§ 147. If she have not borne children her mistress may sell her for money.

It is important that this maid be distinguished from the man's concubine (*amazu*) of whom we have spoken earlier. The former is the property of the mistress and is entirely in her hands to sell or to give to her husband for the purpose of bearing children. The latter is *his* slave. The children of the former are the legal children of the father and of the wife, for she "provides them for him". In the case of

<sup>32</sup> *Ushstabshi*. As the verb *walâdu*, "to bear children", is avoided, "wife" is probably the grammatical subject.

<sup>33</sup> *Usharshishu*. That is, either by bearing them herself or by giving him her maid.

<sup>34</sup> In this and the preceding sections just quoted the sign representing the word "wife" is SAL + DIS (see note, p. 220). Even though we adopt the view that SAL + DIS = "votary wife", it does not necessarily follow that other wives might not have recourse to this same method of providing their husbands with children. The phrase *mârê usharshu* is used also with *ashshatum* (§ 163). It might, however, mean that votary wives most frequently resorted to this measure.

the wife there must have been some sort of adoption presupposed. The children of the latter became legal children of their father only if he formally adopted them.

According to these sections the maid thus given to the husband by the wife occupied a higher position than the other slaves. To be degraded to their level was a punishment; she might not be sold for money as other slaves were; her position was such that she was tempted to put herself on an equality with her mistress. In spite of this insolence, however, the code protects her, at least to this extent, that if she have borne children for her mistress she has a permanent claim on her, and cannot be separated from her children. This last was an advance on the condition of affairs revealed in the contracts of the time. According to them the maid might be sold whether she bore children or not. One such tablet reads: "Bunini-abi and Belizunu have bought as slave-girl Shamash-nuri from her father Ibi-Shân. She shall be wife of Bunini-abi and maid (slave) to Belizunu. When Shamash-nuri says to her mistress Belizunu 'thou art not my mistress' she may put a mark upon her and sell her for money."<sup>35</sup> Apparently she may be sold whether she have borne children or not. In this contract the word "wife" is used in its wide sense. The maid Shamash-nuri is responsible to the wife alone, and consequently there is no mention of her possible rebellion against the husband. In this respect the contract differs markedly from the marriage contracts that have come down to us. It is interesting to note too that here the husband and wife act together in buying the slave-wife. In other cases we have seen that parents included slave-girls in the dowry of their daughters, thus ensuring them as it were against childlessness. Quite as interesting is another contract in which the husband presents his wife with a maid: "Sin-bilanu has presented to Shad-dashu his wife<sup>36</sup> a slave girl named Mutibashti. The chil-

<sup>35</sup> Bu. 91-5-9, 374; CT. VIII. The text is translated and commented upon by Daiches, *Altbabylonische Rechtsurkunden*, No. 26.

<sup>36</sup> Meissner, who first translated this text (MAP. No. 5) at first



dren of Sinbilanu shall make no claim against her. . . . All the children that Mutibashti bears shall be Shaddashu's." It is doubtful whether the last clause means that the children of the maid shall be reckoned as the mistress' own children, or merely as her property.<sup>37</sup>

Among the tablets bearing on this question are two that tell of the marriage of two sisters to one man, and show how the duties and relations of the sisters were regulated in the marriage contract. The first reads: "Warad-Shamash has taken to wifehood and husbandhood Taram-Sagila and Iltani the daughter of Sin-Abushu. If Taram-Sagila and Iltani say to Warad-Shamash their husband 'thou art not my husband' they (*i. e.* the authorities) shall throw them from the pillar (?); and if Warad-Shamash says to Taram-Sagila and Iltani his wife 'thou art not my wife' he shall forfeit house and furnishings. And Iltani shall wash the feet of Taram-Sagila, shall carry her chair to her god's house, if Taram-Sagila be in bad humor Iltani shall be in bad humor, and if she be in good humor she shall be in good humor,<sup>38</sup> her seal she may not open, 10 measures of meal (?) she shall grind and bake (?) for her." The other contract reads: "Iltani the sister of Taram-Sagila, from Shamash-tatum their father, Warad-Shamash the son of Ili-ennam has taken them in wifehood.<sup>39</sup> Iltani, when her sister is in

read "sister", but now reads "wife", A. S. III, p. 38; similarly Peiser, K. B. IV, p. 46.

<sup>37</sup> If the latter, the provision would seem to be superfluous, for the children of a slave belonged also to the slave's owner. However, it is elsewhere expressly stated on the transference of a slave girl to another mistress that the legal title to all the children goes with the gift (Bu. 91-5-9, 280; CT. VIII, translated by Schorr, *Altbabylonische Rechtsurkunden*, No. 18).

<sup>38</sup> *Zini Taram-Sagila Iltani i-zi-ni salamisha isalim.* The parallel text (MAP. 89: 7f) has *zinisha i-zi-in salamisha isali[m]*, for which I would suggest *i-zi-ni* (the end of the sign ZI could easily be confounded with the beginning of the sign IN) and derive it from *zinû*. The two phrases then give one idea: Iltani shall conform to the humor of her sister. The protasis contains the infinitive without any hypothetical particle.

<sup>39</sup> Cf. the other text, "to husbandhood and wifehood". There were

bad humor, shall be in bad humor, when she is in good humor, she shall be in good humor; she shall carry her chair to the house of Marduk. All children that are borne or that they bear shall be their children. If she (*i. e.* Taram-Sagila) say to Iltani her sister 'thou art not my sister' . . . [If Iltani say to Taram-Sagila her sister 'thou art not my sister'] she (Taram-Sagila) may mark her and sell her for money. And if Warad-Shamash say to his wives (wife?) 'not my wives (wife?)' he shall pay one mana of silver. And if they say to Warad-Shamash their husband 'thou art not our husband' they (*i. e.* the authorities) shall strangle (?) them and throw them into the river".

As the interrogation marks show the translation of these texts is not free from difficulty. Apart from purely grammatical questions, however, other difficulties present themselves. The contracting parties are the same in both—the man Warad-Shamash takes in marriage two sisters<sup>40</sup> Taram-Sagila and Iltani. But throughout both tablets the singular *her, she*, etc., and the plural *they, them*, etc., are used apparently almost without discrimination; moreover, the penalties imposed in case of divorce are not the same in both texts. These difficulties vanish, however, if we recognize that there are two almost irreconcilable interests back of this double contract. There is on the one hand the custom (and law) of the land, which demands that there be but one chief wife in a house, and that any other may not take equal rank

apparently different kinds or degrees of marriage, of which little is as yet known.

<sup>40</sup> In what sense is not clear. According to the first contract, Sin-abushu is the father of one of the girls; according to the second they are both daughters of Shamash-tatum, and are called sisters. Meissner thinks they became sisters by marriage to one man (A. S. III, 46), but this does not explain *abishina*, "their father". Pinches' suggestion is more likely, viz., that Iltani, the daughter of Sin-abushu, was adopted by Shamash-tatum and so became the adoptive sister of Taram-Sagila (J R A S. XXIX, p. 612), that is to say, they were legal though not own sisters. An even simpler explanation is that either Sin-abushu or Shamash-tatum was the grandfather. (Cf. A. S. III, p. 51n, for a similar case.)

with her; on the other there is the wish of the father and the two sisters that they stand on equal footing with each other and with respect to their husband. In deference to the first of these, Taram-Sagila is made chief wife; her sister Iltani takes the place (though not the name) of maid; she must wait on Taram-Sagila and should she prove rebellious may be sold as a slave. This difference made it advisable that there be two contracts drawn, one looking at the marriage from the standpoint of the husband's relation to his chief wife Taram-Sagila (our first); the other from his relation to Iltani. Accordingly we learn that if the husband break the marriage bond with Taram-Sagila he shall forfeit his house and its furnishings, but if he divorce Iltani he shall be required only to pay one mana. In deference to the wish of the sisters, the words "mistress" and "maid" are avoided, and whenever the marriage or divorce is mentioned both are included. That is to say, they are treated as far as possible as one individual. The husband may legally of course divorce one or the other, but the divorce of either in this case would mean in reality the divorce of both. But there is still another sign of sisterly affection here in the phrase "all children . . . shall be *their* children." In the case of mistress and maid as we have seen all children borne to the husband were reckoned as children of the mistress. In the contract before us Iltani takes the place of maid in several respects but in regard to motherhood she shares equally with her sister.

Let us turn now to the Bible and see how the marriage customs among the patriarchs compare with those of the early Babylonians. No excuse is necessary for making such a comparison. According to the Biblical account Terah came from the town of Ur in southern Babylonia. Abraham grew to manhood and took his wife there (Gen. xi. 28ff.). For this reason alone we should expect the Biblical account, if accurate, to show some resemblances to the Babylonian customs. In addition, however, it is related that Abraham

and his family for some time after him kept up their connection with the old home, or at least with that portion of the family which had remained at Haran. It is true that Abraham felt that he had made a definite break with the old land (Gen. xxiv. 6), but he received news of the welfare of his relatives in Haran (Gen. xxii. 20ff.), and sent for a wife for his son from among them (Gen. xxiv). At the instance of Rebekah, who herself had come from Haran, Isaac sent his son Jacob there to take a wife (Gen. xxvii. 46 ff). As far as we know this was not done again at any later time.

The question of dates need not detain us long. Hammurabi, the author of the code bearing his name, is identified by many scholars with the Amraphel of Gen. xiv. 1. This would make him a contemporary of Abraham. Whether this identification be correct or not, (and it is not so sure as some scholars would have us believe), there can be no doubt that the period of the patriarchs corresponds in a general way at least to the time of the so-called "First Dynasty" of Babylon to which Hammurabi belonged. More than this is not necessary for our present investigation. But before proceeding further it should be remembered that the Babylonian literature which we have quoted is legal, and is worded with that exact precision which characterizes all legal documents; the Hebrew literature on which we are dependent is on the other hand narrative, and instead of the precision of legal documents we have merely the story of events told us as stories usually are.

In the first place, then, the patriarchs gave presents on the occasion of their betrothal. Of Abraham, it is true, we know nothing with regard to this, for he was married before the more detailed story of his life begins. In the case of Isaac and Rebekah, however, we read that Abraham's "servant brought forth jewels of silver and jewels of gold and raiment and gave them to Rebekah; he gave also to her brother and her mother precious things" (Gen. xxiv. 53). The amount or worth of the

presents is not stated, but in kind they correspond to the gifts mentioned in Babylonia. The presents given by the servant to Rebekah at the well were a golden ring for her nose of half a shekel in weight, and two golden bracelets for her hands of ten shekels in weight (Gen. xxiv. 22, 47). In one<sup>41</sup> dowry already mentioned one shekel of gold is allowed for earrings, that is half a shekel for each. In another<sup>42</sup> half a shekel is given for her "front" or "face" perhaps a nose-ring. In this connection we may appropriately notice that Rebekah's father Bethuel appears in the story only at the time of the actual betrothal (Gen. xxiv. 50), elsewhere Laban her brother and her mother play the leading part. The reason for this is not apparent, though many conjectures might be made. Similar difficulties present themselves in some Babylonian marriage contracts. For instance in one case<sup>43</sup> the mother and the brothers arrange the contract and give the bride the dowry that had been set aside for her by her father. It is not stated whether the father was dead or not. In another<sup>44</sup> a brother and sister give the bride to her husband. In another a sister is to give the bride in marriage.<sup>45</sup> In others the father acts alone or the father and mother together. The freedom of choice accorded to Rebekah (Gen. xxiv. 57) is quite in keeping with Babylonian custom. Jacob had nothing to offer in the way of gifts or bride-money but he served<sup>47</sup> seven years for each of his wives. Reckoning his

<sup>41</sup> MAP. No. 7.

<sup>42</sup> Bu. 88-5-12, 10; CT. VIII., *sha pani napshatisha*.

<sup>43</sup> Bu. 88-5-12, 10; CT. VIII.

<sup>44</sup> Bu. 88-5-12, 193; CT. VIII. If the reading *Ammiditana sharrum* is correct, the father was alive when the contract was drawn, for the tablet is dated in the eleventh year of his reign (see Ungnad, *Die Chronologie der Regierung Ammiditana's und Ammizaduga's*, B. A. VI).

<sup>45</sup> Bu. 91-5-9, 394; CT. II.

<sup>47</sup> Apropos of Jacob's complaint that he had been required to make good whatever was either torn or lost, the Code of Hammurabi prescribes that the shepherd is responsible for lost animals, but not for those torn, §§ 263, 266; see also Ex. xxii. 12f.



services at the average wage of a slave (which of course is too little)—six shekels a year—he paid as bride-money a little over two-thirds of a mana for each wife.<sup>46</sup>

Concerning the dowries of the wives of Isaac and Jacob we have only incidental references. With Rebekah went her nurse and her maidens (Gen. xxiv. 59, 61), but what else is not said. Laban also gave a female slave to each of his daughters at their marriage (Gen. xxix. 24, 29) quite in the Babylonian fashion; but what else is not stated here either. Jacob's wives' remark however: "Is there yet any portion or inheritance for us in our father's house" (Gen. xxxi. 14),—implying of course a negative answer—is quite in keeping with the Babylonian law (custom) of inheritance. The married daughter received only her dowry (§ 183),<sup>48</sup> the son received both bride-money for his marriage and a share in the father's estate (§ 166).

With regard to the position of the childless widow it will be remembered that Judah sent the childless Tamar to her father's house after the death of her husband (Gen. xxxviii. 11), as we have seen was probably the Babylonian custom. But the levirate marriage which is here mentioned for the first time in the Old Testament was unknown to the Babylonians as far as we are aware.

It is in regard to the actual relations between man and wife and the position of children that we find the closest correspondence. And here it may be remarked that Laban put into words the fear that lies back of many Babylonian

<sup>46</sup> The Hebrew word for bride-money was מִיָּהָר, and is found in Gen. xxxiv. 12; Ex. xxii. 16; I Sam. xviii. 25. The custom was common to other Semitic peoples also. A curious instance of the persistence of custom is shown by the fact that the Syrian laws of the early Christian era are almost identical with the Code of Hammurabi in respect to breaking an engagement and the return of the bride-money. Sachau, *Syrische Rechtsbücher*, Vol. I., p. 19, § 33. That other gifts besides the bride-money were usual is seen from Gen. xxxiv. 12. The מִיָּהָר is not mentioned in the stories of the patriarchs.

<sup>48</sup> This section refers only to the *shugetum*. If this means a secondary wife we have no general law concerning daughters. If, on the other hand, it mean 'marriageable woman', there is no such lack.

marriage contracts and laws when he said, "Jehovah watch between me and thee, when we are absent one from another; if thou shalt afflict my daughters and if thou shalt take wives besides my daughters, no man is with us; see God is witness betwixt me and thee" (Gen. xxxi. 49f.).

Abraham had only one legal wife at a time, as far as we know. His first, Sarah, bore him no children for many years and despaired of ever having any. As, however, the possession of children was of prime importance,<sup>49</sup> she gave her maid Hagar to her husband, saying, "It may be that I shall obtain children<sup>50</sup> by her" (Gen. xvi. 2). This is, of course, precisely the custom which we read of in Babylon.<sup>51</sup> Sarah, like her sisters in her old home, could hold property in her own name; she owned a maid. Where and how she obtained her is not said, but as Hagar was an Egyptian, it is probable that she did not receive her as a part of her dowry, as Rachel and Leah received their maids, but that she acquired her while in Egypt (Gen. xii.). It would be interesting to know, and it is not at all impossible that Abraham made his wife a present of Hagar, as Sin-bilanu presented his wife Shaddashu with Mutibashti. Sarah gave her maid to Abraham to bear children for her. The Babylonian custom explains how it was possible for her to expect to have children in this way.

"And Hagar conceived, and when she saw that she had conceived her mistress was despised in her eyes" (Gen. xvi. 4). As happened frequently in Babylon, so here Hagar presumed on her being with child to Abraham and was

<sup>49</sup> How important it was among the Hebrews may be gathered from Rachel's complaint, "give me children or else I die" (Gen. xxx. 1) and the blessing of Rebekah (Gen. xxiv. 60), not to mention many other similar passages.

<sup>50</sup> אֲבִנָּה a denominative from the word for son (בֵּן). The word is used only here and in Gen. xxx. 3 in this sense. The translation of the RV does not materially differ from this.

<sup>51</sup> If it should eventually turn out that only "votary wives" had recourse to this method of providing children for their husband, this would suggest the conclusion that Sarah had been in the service of a temple before her marriage to Abraham.

insolent. In Babylon such action on the part of the maid who had borne children was usually punished by her mistress selling her. The code of Hammurabi mitigated this to degradation to the rank of common slave. But in Hagar's case the matter was more complicated, for the child was not yet born. Sarah in her anger blames Abraham for her maid's attitude, and on being reminded that Hagar is her maid, and therefore at her disposal, she treats her harshly, so that Hagar flees (Gen. xvi. 5ff.). Later, however, the maid returns and Ishmael is born. Although the son of a slave, he is legally the firstborn son and heir of Abraham and Sarah according to Babylonian custom, and, as far as we can see, he is regarded as such in the book of Genesis, being frequently called Abraham's son (Gen. xvi. 15; xvii. 23, 25, *et al.*), and regarded as heir by Abraham (xvii. 18) and Sarah (xxi. 10). When Isaac was born there were two legal heirs and Sarah was unwilling to have it so. She now wished Ishmael to be classed as the child of a slave<sup>52</sup> (Gen. xxi. 10). So she persuaded Abraham, against his wish, to drive out Hagar and Ishmael, and in so doing she caused him to act contrary to the humanitarian principles of the code of Hammurabi, which forbids the sale, (and *a fortiori* the expulsion), of a maid that had borne children to her mistress' husband, and also the disinheriting of a son without good reasons (§ 168f.). The one good thing about the expulsion of Hagar and Ishmael was that mother and son were not separated.

<sup>52</sup> The use of אִקְוָה in this declaration of Sarah's is significant. Hagar in the previous chapters is always called שִׁפְחָה. That the two words could be used almost interchangeably is evident from Chap. xxx. The latter is generally regarded as the lower term (I Sam. xxv. 41, and compare the contrast in Ex. xi. 5), and this may be so. But there is this difference between the words: the former (אִקְוָה) is the customary legal term for a female slave, the feminine of אִקְוָה (Ex. xx. 10, 17; xxi. 20, 26, 27, 32; Lev. xxv. 44), and the opposite of the hired servant שִׂכְרִיר, (Lev. xxv. 6), and would therefore be chosen to describe the legal position of a slave. The latter (שִׁפְחָה), although applied to slaves, did not have the legal connotation of the former, and seems perhaps to point to the woman's position as a laborer (Ex. xi. 5; I Sam. xxv. 27, 41, contrasted with vs. 24, 25, 28, 31, 41).

This same institution of the maid bearing children for her mistress meets us again in the case of Rachel and Bilhah, with the explanatory statement that the offspring shall be the adopted child of Rachel (Gen. xxx. 3),<sup>53</sup> and of Leah and Zilpah (vs. 9). In later times we hear nothing of it.

The position of the other children of Abraham known to us is not so clear. On the one hand, the evident contrast between "the sons of the concubines that Abraham had" (Gen. xxv. 6) and "Isaac and Ishmael his sons" (vs. 9) is noteworthy. In the former of these the writer seems purposely to avoid the expression "sons of Abraham". This would be entirely in keeping with the Babylonian custom, whereby the sons of concubines were not reckoned sons of their father unless adopted by him. It is in agreement also with the position of Ishmael elsewhere, who is regularly called the son of Abraham and never the son of a concubine, and also with the fact that Hagar is not called a concubine; nor is Keturah. We would then have to suppose that by "concubines" (vs. 6) are meant a number of female slaves who bore children to Abraham, but of whom we hear nowhere else except in the general lists of his possessions (*e. g.* Gen. xii. 16; xxiv. 35). That would mean simply that Abraham acted as other men of his time in this respect, and the omission of any other reference to his concubines is explained by their unimportance to the narrative. They are mentioned here with propriety in connection with his death and the transference of his estate to Isaac, and have their proper place immediately after the children of the wives.<sup>54</sup>

On the other hand, it has to be said that although Hagar herself is never called a concubine, but rather Sarah's maid ( שפחה ) or slave ( אמה ), there seems no good reason for not applying this word to her. Bilhah, who bore the same relation to Rachel that Hagar did to Sarah, is called

<sup>53</sup> Following Stade's interpretation, ZAW. 1886, pp. 143ff.

<sup>54</sup> Compare the arrangement in Gen. xxii. 20-24; I Chron. ii. 42-46; iii. 9, *et al.*

Jacob's concubine (Gen. xxxv. 22). Also, with regard to Keturah; she is called Abraham's wife (  $\eta\omega\aleph$  Gen. xxv. 1 ), but the Hebrew word here used may mean also "woman" in the widest sense of the word. I Chron. i. 32 calls her Abraham's concubine, but at that late date the position of concubine, and so the meaning of the word itself, may have been somewhat modified.<sup>55</sup> If these are the concubines meant, Ishmael was degraded from his position as Abraham's son to the inferior one of son of a concubine.

Whoever these "sons of the concubines that Abraham had" were, however, Abraham gave them "gifts and he sent them away from Isaac his son while he yet lived, eastward, unto the east country". That is to say, he gave them their freedom and sufficient means to begin life. The code of Hammurabi, as we have seen, provides that a man may either adopt the sons of his concubines, in which case they stand on an equal footing with the other sons, or that he may not adopt them, in which case they and their mother shall receive their freedom, but nothing else, upon the death of the father-proprietor. Abraham's action, it will be noted, was midway between these. It is generally thought that this step was taken for Isaac's benefit, but, judged by Babylonian custom, it had also the effect of protecting these sons of concubines from Isaac, who as sole heir of his father might attempt to keep them in slavery.

In Gen. xxv. 5 it is said that "Abraham gave all that he had unto Isaac". If Ishmael and the sons of Keturah were sons of concubines, they had no claim on the estate, and were generously treated for those times in being given their freedom and presents. If, however, we regard them as

<sup>55</sup> As a rule the sons of a man are distinguished from the sons of his concubine, *e. g.* I Chron. iii. 9: "All these are the sons of David, besides the sons of the concubines." Sometimes, however, the son of the concubine is called the son of the man, *e. g.* Jud. viii. 31. In this case we are left in doubt as to whether the child was adopted and so became the legal son of his father, or whether the legal position of the sons of concubines had changed during the centuries. In some cases we know that the child was adopted, *e. g.* Gen. l. 23, *cf.* I Chron. vii. 14.



legal sons of Abraham, they were disinherited. This power was in the hands of Babylonian fathers also, but the code of Hammurabi discountenances such action on the part of the father by enacting that he shall submit his reasons to the authorities for their approval, and shall not be permitted to cut off a son unless he has twice committed a grave fault against his father (§§ 168, 169). As a general rule, the sons shared equally in the father's estate (§ 166f.), but one text has come down to us (MAP. No. 107) in which we read of one son receiving the whole estate and afterwards giving portions to his brothers.

Before the birth of Ishmael, when Abraham had no legal son, he is made to say, "One born in my house (בן בית) is mine heir" (Gen. xv. 3). What this means is not clear. We have seen above that, according to Babylonian custom or law, when there were both children of a concubine and children of a wife, the former did not inherit with the latter unless adopted by the father. Whether this can be taken to mean that in the event of there being no legal children the children of the concubine were the heirs, is at best doubtful. In the time of the Judges something like this appears to have been known, for Jephthah, the son of a harlot (זונה), was apparently in possession of part at least of his father's estate until the sons of the wife were grown and drove him out (Jud. xi. 1f.). Whether he was adopted by his father or not we do not know. The "son of my house" in Gen. xv. 3 cannot mean a child of Abraham's, however, on account of the following verse: "This man shall not be thine heir, but he that cometh forth out of thine own bowels shall be thine heir." Another question that rises in this connection is whether the "house-son" (בן בית) and the "house-born" (יליד בית, Gen. xiv. 14; xvii. 12f.) are the same. The latter expression has been found (though partly broken) in a Babylonian contract.<sup>56</sup> It has the same meaning in both languages, apparently, *i. e.* the

<sup>56</sup> CT. VIII. 28b 8 *wi-li-[-id bi-t]i-sha*. Translated by Schorr, *Alt-babylonische Rechtsurkunden*, No. 5.

slave born in the house in contrast to the bought slave.

Another thing of which we know nothing from the Babylonian side is the statement of Laban's, "it is not so done in our place to give the younger before the first-born" (Gen. xxix. 26). Jacob apparently knew nothing of such a custom. The code of Hammurabi assumes that the elder brothers will receive their bride-money before the younger (§ 166), but this we cannot press so far as to say that such was always the custom, nor can we apply the same to the dowries of daughters without further evidence.

Whether it was customary among the Babylonians to marry own sisters or half sisters, as Abraham did (Gen. xxi. 12), we do not know. Sections 154-158, which deal with incest, do not mention this relationship. It was forbidden later among the Hebrews (Lev. xviii. 9, 11; Deut. xxvii. 22, and compare 2 Sam. xiii. 11 ff.), but was common among the Egyptians.<sup>57</sup> The marriage of one man to two sisters did, however, occur, as we have seen above. It was forbidden in the Mosaic law (Lev. xviii. 18). The story of Leah and Rachel has new interest for us when read in the light of the marriage contracts of Taram-Sagila and Iltani. Whether Leah had any superior rights over the younger Rachel is not stated; but the story of Gen. xxx. and the mutual jealousy of the two sisters stands in sad contrast to the agreement that the children of Taram-Sagila and Iltani should be *their* children. The story in Genesis is to be viewed rather as an example of the unhappy state of many polygamous homes of that time which the humanitarian code of Hammurabi was combatting.

From this brief comparison it is evident that the account of family relations in Babylon and among the early patriarchs are in substantial agreement, which at times extends even to details. The fragmentary nature of the stories in Genesis, with only incidental allusions to family affairs, leaves us at times in doubt as to the proper interpretation. In some matters Abraham did not act exactly as the Baby-

<sup>57</sup> Breasted, *Hist. of Egypt*, p. 85.

lonians did in the same circumstances (*e. g.* the treatment of Hagar and the sons of his concubines); but he never acted contrary to Babylonian principles, nor did his conduct differ from that of his Babylonian kinsmen any more than did theirs among themselves. On the other hand, both accounts are in agreement with regard to the general state of affairs presupposed, and also in details, whether specifically mentioned or only incidentally alluded to. Abraham in particular, in all his family affairs, appears to us as a normal Babylonian gentleman of wealth, neither in advance of nor yet behind his times, but actuated in the main by that same humanitarianism that we find in the code of Hammurabi. Of the other patriarchs the picture is not so clear.

The east is very conservative, and the customs which prevailed at the time of Hammurabi and Abraham may have continued for many centuries. Indeed, many of them are still to be found there. Unfortunately, we are not yet in a position to write the story of the later development of marriage laws and customs in Babylon. It should not go unnoticed, however, that the strange institution of the maid bearing children for her mistress is not met with in the Bible after the time of the patriarchs, nor has it yet been found in Babylonian literature of a later date, as far as we know. It is, of course, too soon to draw conclusions, but the fact just mentioned, and, indeed, our whole comparison,—the similarity of customs in Genesis and the Babylonian records from the end of the third millennium before Christ, and the non-appearance of some of these customs in later times,—favor that view of Hebrew history which holds that the Hebrews were in touch with and influenced by the Babylonians in the infancy of the race, as well as in the period of its decay, and that their literature faithfully reflects the conditions of these early times.

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