The Law & Ceremonial of Marriage in the Code of Hammurapi Assyrian Lawbook Hittite Code and Old Testament

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The Law and Ceremonial of Marriage in the Code of Hammurapi, Assyrian Lawbook, Hittite Code, and Old Testament.

The purpose of this discussion is to discover the nature of the Institution of Marriage in the above mentioned sources. With this in view the work will examine them in detail & consider their provisions. With the sources will be considered such relevant Contracts, Letters, & Business Documents as have been published & made available. In these will be found illustrations of the lawgiver's enactments: occasionally it will be found that in practice distinctions have been introduced which are not in the Codes. These the discussion will mark & record. A large number of such Business Documents are available in connection with the first source but for the Assyrian Lawbook & the Hittite Code there is not the same wealth of material. The exposition of Marriage Law in the Old Testament has been supplemented by occasional references to the Mishnāh & Talmud.

An examination of these Codes-for convenience the sources may be called by this term- will lead to the conclusion that we are dealing with an Institution that has the same fundamental features in each case. It is based on the idea or Law of Sale & is commonly called 'Marriage by Purchase'. There may be other forms represented but they are exceptional & are treated as such: there may be present in the Codes vestigial remains of something older e.g. Marriage by Capture: these also will be duly examined. The Codes reveal a certain development in practice & procedure:this also will be traced & unfolded. In so doing it may be necessary at times to pass beyond our sources, and make a brief survey of precedent & subsequent periods,whenever records allow .

No uniform type of the Institution will be found in the Codes. Polygamy & monogamy are both present. Our first three sources reflect monogamic conditions: the Old Testament has not passed the stage of polygamy. In this case a brief outline of the subsequent development to monogamy in Judaism will be given.

It is unfortunate in this connection that there is no precise terminology in English. Marriage with us may signify the act of marrying, the actual wedding ceremony, or the state of matrimony resulting therefrom. Where any doubt may arise the precise sense will be made clear by the use of the German 'Eheschliessung', 'Hochzeit', 'Ehestand', which may be taken as corresponding to the three senses of the English 'Marriage'.

The thesis will endeavour to prove that the Status of Marriage (Ehestand) was established by preceding Contract of Betrothal & Marriage Contract. It will be shown that while, in general, the Contract of Betrothal gave rise to rights 'in personam', as opposed to rights 'in rem', it appears in the case of the Old Testament to give rise to rights 'in rem'. The Marriage Contract, on the other hand, will be shown to be an actual Conveyance: it is 'sponsalia de praesenti' as opposed to the 'sponsalia de futuro' of the Betrothal Contract: by it the status is created & rights 'in rem' arise. The parties to the Contracts will be observed & the significance of such variations as occur will be explained.

Written Contracts of Marriage are available from very early times in the case of Sumerian & Babylonian civilisations & examples will be adduced. The Code of Hammurapi & the Assyrian Lawbook imply their regular use, the former expressly, the latter inferentially (C.H.128: A.G.35)

That written Contracts were in use in early Hebrew practice may be doubted. Gen. XXIII,13ff. describes a Contract of Sale but it is not clear that this was a written Contract. It may quite well be so in view of verse 24,"the field & the cave were made sure unto Abraham for a possession & a burying place by the sons of Heth". Jer. XXII, 10ff. ~~XXXX~~ implies a written Contract of Sale. As the Deuteronomist knows the written"bill of divorcement" it is probable that written Contracts of Marriage were in use by this time. At Syene in the middle of the 5th.century B.C. such contracts are found & an example will be given. To later Judaism the Marriage Contract was essential. "Ohne Kethûbâh....gibt es in Judentum kein rechtliches Eheleben". (Krauss, Talmudische Archäologie,Bd.II,p.44)

In the following pages an effort will be made to set forth first the forms & ceremonial of the Contract of Betrothal. The Contract & Status of Marriage will next be examined with reference to the rights, obligations and duties arising therefrom. The discussion will also deal with the Wedding Ceremony & usages connected therewith. Later will be discussed The Legal Dissolution of Marriage (Divorce) and the Moral Subversion of Marriage(Adultery). Questions of age and capacity will also be treated or will emerge in the course of the work. The practice of Levirate Marriage will also engage attention In all these matters there will be found a consistent scheme of form & practice maintaining itself with certain modifications through out. These modifications will be noted both in reference to the particular source & the larger whole. The conclusion will be reached that in all these Codes we are dealing with an Institution that is derived from what is generally known as"Marriage by Purchase". The form is consistent through all the sources although its expressio change.

There is ground for comparison of these sources in history, philology, and ethnology, as is amply evidenced by the works already published. The present discussion may claim to be narrower in scope than any of the works referred to in the Bibliography: it may also claim to be distinct from all of them. It is narrower in its scope inasmuch as it has dealt with only one Institution (Marriage): it is more extensive than any one of these works in that it has operated with all four sources together. It may claim to resemble such a work as Jirku's " Altorientalische Kommentar" in its use of sources, but w while Jirku has sought additional light from the Sumerian Family Laws, the present work has frequently sought to gain light on earlier practices by a consideration of subsequent history, particularly in the exposition of the first & last named sources.

In the course of the work an attempt has been made to explain certain features. The discussion has sought to relate the"huruppâte" of the Assyrian Lawbook to the normal mode of betrothal: has also sought to find reason for the frequent enactments in that same source dealing with the wife in the house of her father: has further endeavoured to explain the Assyrian form of the Levirate, while the relation between "biblu" & "tirḫâtu",and that between "biblu""zubullû" & "sablonôth" is shown. THe use of " Chuppāh"in Sumerian & Babylonian civilisation is illustrated: traces of the " Shōshín" in the Code of Hammurapi are indicated. An effort has been made to draw a distinction between concubines & wives, particularly in the Old Testament. By a study of later Babylonian Contracts light has been sought on the later Babylonian practice. Regarding the plan of treatment which the writer has adopted it is to be noted that the discussion proceeds by analysis of each source, examining each point in detail &

endeavouring to deduce the practice by a review of the various provisions & enactments. The parts of the subject are set in natural sequence.

The sources are treated in chronological order. The Code of Hammurapi is the oldest & the fullest. The Assyrian Lawbook follows both on grounds of chronology & relationship. Its date may be between 1400-1300B.C. The Hittite Code is dated by Zimmern at 1300B.C., by Horzny at 1350B.C. The Old Testament, on the other hand, represents practice extending over many centuries but in all probability none of its written records attain to the antiquity of the preceding.

While it is not the purpose of this work to estimate the influence of the Code of Hammurapi upon the other Codes, it must be borne in mind that its influence was wide & extensive, and we may expect to find traces of such influence on the others. In the early days before 2000B.C. there was close connection between Sumeria & Cappadocia & regular intercourse. Hammurapi had as one of his titles "king of the Amurru", which implies a far extending Empire & influence. The presumption that Babylonia had a prominent influence on Palestine long before the Israelite Codes were drawn up, is one that grows stronger as time goes on". (Johns, HDB, Extra Volume, p. 612) The influence of this Code was felt even beyond the bounds of Hammurapi's extensive Empire & Roman Law owes not a little to the Babylonian legislator.

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ABBREVIATIONS.

C.H.= Code of Hammurapi

A.G.= Assyrian Lawbook

C.Ht.= Hittite Code

O.T.=Old Testament

H.G.= Kohler,Peiser,Ungnad,&Koschaker,Hammurabis Gesetz

ACL = Johns, Babylonian & Assyrian Laws, Contracts,& Letters

ADB = Johns, Assyrian Doomsday Book

APR = Meissner, Beiträge zum altbabylonischem Privatrecht

BA = Do. , Babylonien und Assyrien

BV = Peiser, Babylonische Verträge

ERE = Encyclopaedia of Religion & Ethics

HDB = Hastings, Dictionary of the Bible

MVAG= Mitteilungen der vorderasiatisch-aegyptischen Gesellschaft

SBAW= Sitzungsberichte der kgl.preussischen Akademie der Wissenschaften

SFG = Sumerien Familiengesetzen

VS = vorderasiatische Schriftdenkmäler der kgl. Museen zu Berlin

VAB= vorderasiatische Bibliothek

ZA = Zeitschrift für Assyriologie

ZVRW= Zeitschrift für vergleichende Rechtswissenschaft

BB =Talmud Tractate,Bābā Bathrā

'Ar = " " , 'Arākhîn

Kidd.=" " , Kiddūsîn

Keth.=" " , Kethūbôth

Sanh.=" " , Ṣanhedrîn

Yeb. =" " , Yebāmôth

Kyr. = Strassmaier,Inschriften von Cyrus

Nbd. = " , " " Nabonidus

Nbk.= Strassmaier, Inschriften von Nebukadnezar

Ner.= " , " " Neriglissar

R.A. = REVUE D' ASSYRIOLOGIE.

A.J.S.L. = AMERICAN JOURNAL OF SEMITIC LANGUAGES.

C O N T E N T S .

CONSTITUTION OF MARRIAGE.

Contract of Betrothal.

BETROTHAL.

Code Of Hammurapi.

The first step in the constitution of Marriage according to the Code is Betrothal, which is by contract. The word itself (irsîtu) is not found in the Code but occurs for the first time in a Contract 100 years after Hammurapi's time which shall be quoted later (H.G.III,10).

We find here a definite procedure prescribed & the parties to the contract are defined. The form is "Arrhalverlöbniss", & the contract is effected by the giving & receiving of 'Arrhae'. Such a form is common to various legislations of the Ancient East, & in each case retreat from the contract is open to either party under a prescribed penalty.

This payment does not seem to have been essential & marriage could be effected without this preliminary prestation.

The payment of tirḫâtû on the part of the man leads to a prestation on the side of the bride's parents. This 'dowry' ('šeriqtû) was probably fixed at Betrothal & paid over when the wife entered the house of her husband.

The giving of the 'tirḫâtû' or 'bride-price', & its acceptance give rise to a relation between the parties which is described in terms appropriate to the married state.

The Contracts refer only to tirḫâtû: the Code conjoins tirḫâtû & 'biblû': the relation between these will be discussed.

C.H. 159 "If a man who has brought a present (biblû) to the house of his father-in-law & has given the marriage settlement (tirḫâtu) look with longing on another woman & say to his father-in-law (emum) 'I will not take thy daughter', the father of the daughter shall take to himself whatever was brought to him."

C.H. 160." If a man bring a present to the house of his father-in-law & give a marriage settlement, & the father of the daughter

say 'Iwill not give thee my daughter,' he (emum) shall double the amount whichwas brought to him & return it.

C.H.161. If a man bring a present to the house of his father-in-law & give a marriage settlement & his friend slander him: &if his father-in-law say to the claimant of his wife 'My daughter thou shalt not have',he(i.e.emum) shall double the amount which was brought to him & return it, but his friend may not have his wife.

From the foregoing it clearly emerges that Betrothal was effected by the man bringing 'biblu'&'tirḫâtu' & by the bride's father's acceptance of these. The bride does not act for herself but is under the 'potestas' of her father or her guardian.The father gives or witholds his daughter.There is nothing,on the other hand,to indicate that the man required the consent of his fatherin arranging Betrothal although Contracts from the later Assyrian period suggest a doubt as to whether the son could marry without his father's consent(Kyr.301).InC.H.155-6 the father acts on behalf of his son but this seems to be the case of a minor. The usual arrangement suggested by the foregoing shows that the bridegroom was one of the parties & the bride's father was the other. The latter receives the 'biblu'&'tirḫâtu' & the contract of Betrothal is established.

The legal consequences involved are similar to those pertaining in ancient Laws of Sale.Where an'Arrha' has been given,in the event of the buyer resiling from the contract he shall lose the 'Arrha':in the event of the seller failing to deliver the goods he shall restore twice the value of the 'Arrha'. This is found in Greek,Roman,&Byzantine law as also in the Syro-Roman Lawbook(Koschaker,Hammurapistudien, p.137). Although 'biblu'&'tirḫâtu' are mentioned in the Code as the means by which the Betrothal Contract is effected, they are not mentioned in conjunction elsewhere,while in the Contracts 'biblu'

does not appear although tirḫâtu is present. As to the amount of tirḫâtu the Contracts show various sums. Taking H.G., Vol. III, No. 3 gives 1 šekel, No.8 gives 4 šekels, No.6 gives 5 šekels, No.10 gives 1/3 mina, as does also No.483: No.9 gives ½ mina. The tirḫâtu, was plainly a money payment.

H.G.III,10 will indicate clearly the two moments or steps in Babylonian marriage. " ½ Šekel Geld für die Vorderseite ihres Halses: 2 Šekel Handspange aus Silber: 1 Šekel Ring aus Silber: 1...Kleid; 3 Hemden: 3 Hüte; 1 kleinen Bronzkessel im Gewichte von 5 Minen; 1....Stein; 1....Stein; 1 Bett; 5 Stühle: ..... 1 Weib Suratum, die Nebenfrau, ihre Schwester: alles dies hatte Sin-erîbam, ihr Vater, der Sohn des Awîl-Sin, der Lamassatum, der Marduk -Priesterin und Zêrmašîtu, seiner Tochter, im Hause der Anunîtum bei ihrem Verlöbnis (ina bit A. ina iršîtisa) bestimmt. Darauf haben Šubultum, ihre Mutter, Ḳîšab- Sin, Ugmil-Sin, und Sippar-lîšer, ihre Brüder, ...es ihr gegeben, worauf sie ins Haus des Ilušu-bâni, ihres Ehemannes....hineingehen liessen: darauf wurden (die genannten Dinge) ihm gegeben. Nachdem 1/3 Mine Silber ihre Tirḫâtu, an ihren Gürtel gebunden und alsdann dem Ilušu-bâni, ihrem Gatten, zurückgebracht worden ist, sind für alle Zeit ihre Kinder ihre Erben. Bei Šamas, Marduk, und König Ammiditana schworen sie".

Here we have three moments clearly distinguished a) the tirḫâtu has been paid, b) the dowry has been fixed, c) dowry is given to the man when the wife enters his house.

C. H. 166 " If a man take wives for his sons & do not take a wife for his youngest son, after the father dies, when the brothers divide, they shall give from the goods of their father's house/

to their youngest brother, who has not taken a wife, money for a marriage settlement(tirḫâtu) in addition to his portion & they shall enable him to take a wife.

The tirḫâtu is that which enables him to get a wife & biblu is not mentioned.

Nevertheless marriage could be effected without tirḫâtu as appears in C.H. 139 "If there were no tirḫâtu he shall give to her ½ mina of silver for a divorce" (v.page 37)

The dowry('šeriqtu' in the Code, 'nudunnû' in the Contracts) was probably fixed when the tirḫâtu & biblu were presented. It was given by the parents of the bride & its disposal is regulated by the Code. The 'tirḫâtu' from the husband induces a corresponding 'šeriqtu' from the bride's parents or representatives. We have quoted on page 3 a Contract revealing the nature & content of the dowry (v.page 3)

The giving of biblu & tirḫâtu, as we observe from the terms used creates a relationship or status which is described in terms appropriate to married life. This we shall find also in A.G. & C.T. The bride is called 'aššatum';the husband 'Bêl aššatim':the prestation is brought'ana bît emišu',to the house of his father-in-law'. Of the friend who slanders we read 'aš-ša-zu i-bi-ir-šu u-ul i-iḫ-ḫa-az', 'his wife his friend shall not take'.Of this terminology Koschaker remarks "Sie bedeutet, wie ich glaube, nicht anders als die Anwendung des kaufrechtlichen Satzes,dass der Kaufer mit der Preiszahlung Eigentum der Ware erwirbt,auf das Recht der Eheschliessung" (MVAG, 1921,page 52-3)

What, finally, is the relation between biblu & tirḫâtu? From the fact that biblu is not mentioned further in the Code & is absent from the Contracts we may infer that it is not as essential as the tirḫâtu. Biblu is from the root ובל = to bear, carry,bring (offerings),whence biblu may mean something brought or carried. We could

from this infer that it was a first instalment, a payment to account part of the tirḫâtu prestation, of which the remainder is to be paid later. Such an argument might be supported on etymological grounds but the sections (159-161) clearly indicate that the payment of both constitute the contract of Betrothal.

The language used may supply a clue. 'biblam uššâbil, tirḫâtam iddin' The man causes the biblu to be brought, but he gives the tirḫâtum, from which we may infer that the tirḫâtu was a money payment, while the biblu was constituted by presents of a solid & substantial kind that had to be brought or sent. In all probability it would consist of provisions for a feast or household articles or presents of a substantial nature. " Man wird ihn(biblu) daher am besten als Werbungsgeschenk bezeichen dürfen, eine Institution, die sich anderweitig findet" (Koschaker, Hammurapistudien p.133-4). From the little emphasis laid upon biblu in C.H. & its entire absence in the Contracts of the period we may conclude that biblu was rather a matter of custom & usage while tirḫâtu was matter of law.

(Scheil's Translation)

We find here the same features as in the C.H., although owing to the defective text & partial treatment of this matter in the A.G. we are unable to get as complete a view of procedure as in the earlier Code. Evidence from Contracts of the period is not available.

We meet here biblu & tirḫâtu but something additional is present & this we shall consider (A.G.43,44). We shall learn the nature & content of biblu & perceive its relation to tirḫâtu.

We note that the contract is most frequently arranged by the respective fathers: the bride's father occupies the same role as in C.H. but the father of the man is more active than in the earlier Code.

The form of Betrothal is Arrhalverlöbniss.

A.G. 43 "Si quelqu'un dans une onction(?) du parfum sûr la tête d'une fille a versé, et si dans une 'šakûlte' des 'ḫuruppâte' (gateaux?) il a apporté on ne rendra rien en retour".

A.G. 44 Si quelqu'un du parfum sur une tête a versé ou des 'ḫuruppâte a apporté, si le fils à qui on a promis une femme meurt ou disparaît, parmi les fils restants (du père), depuis le plus grand jusqu'au plus petit qui aurait 10 ans à celui qu'on voudra on la donnera. Si le père meurt et si le fils à qui une femme a été promise meurt aussi, s'il y a un petit fils du mort ayant 10 ans, celui-là épousera la fille. Si à la limite de 10ans les petit-fils sont plus jeunes le père de la fille à qui il voudra la donnera, et à son gré, retour (de cadeaux de fiancailles) à égalité rendra. S'il n'y a pas de fils tout ce qu'il a reçu, pierre precieuse et tout sauf les aliments, en capital il rendra; les aliments il ne rend pas".

Here we have something that is peculiar & its significance is not

quite clear. Anointing with oil is a religious ceremony: according to Tell-el-Amarna letters kings were so anointed: cf. 1Sam. 10, Exodus 29^{7}, Levit. 8^{30}. In Babylon as in Palestine it was not unusual to anoint pillars. " So wird die Salbung auch in Assur und Babylon zu verstehen--das ist bemerkenswerte--weil sonst in den A. G. wie überhaupt in Babylonien Assyrien, aber auch in jüdischen Rechtdie Ehe durch einen rein bürgerlichen Akt zustande zu kommen scheint" (Jacob, ZVRW, 1925, p.359).

The meaning of the Assyrian is not quite clear. Scheil puts a? after 'tamirâki', onction? Šakûlte may=banquet, but there is diversity of opinion as to 'huruppâte' which is variously rendered 'cakes', 'autumn fruits', or 'bronze plates'. The general sense is clear enough whether we take the last clause with Scheil as referring to a return of presents or with Cruvelhieras = ' on ne reviendra pas par une révocation". (E.A. p.218) (v. p. 10 note)

We have in addition something that is not found in C.H., the law of Levirate here in the case of betrothal. (v. page 117)

So much is plain in the foregoing. The giving of gifts in this ceremony establishes a claim on the bride & on the bride's father. That claim can only be annulled-after all the steps of the Levirate have been traversed- by the restoration of the betrothal gifts, save in so far as these were edible, the presumption being that both parties helped to consume them. Thereafter the father is free to dispose of his daughter to whom he will.

'Tirhâtu' meets us only once in this dource but the reference is noteworthy. A.G.39 " Si une femme demeure (est mariée) chez son père et si son mari la répudie le 'dimaki' qu'il lui avait fixé il la reprendra: à la tirhite qu'il a apporté il ne touchera pas. Cela est garanti à la femme".

We may assume that the tirḫâtu still played an essential part in Betrothal although it is mentioned only in this paragraph. This Lawbook is obviously more concerned with womanly & wifely duties & has little place for the exposition of womens'rights. This reference to tirḫâtu reads like an aside but it casts light on the procedure.

It may not be clear from this as whether it was paid to the woman or her father: Scheil in his Index defines 'tirḫâtou, dation faite par le fiancé à son beau-père'. Cuq (Revue d'Assyriologie 1922,p.46) holds it was paid to bride herself & with the latter the present writer agrees. If it were paid to the father we might surely have expected that biblu & tirḫâtu would be joined here,as in C.H. 159-61, where these are conjoined as the gifts brought to the father-in-law. Biblu are here mentioned alone & are paid to the bride's father. The tirḫâtu in A.G. resembles the'Mahr'of later Arabia & Islam where it is given to the bride. cp.also 'Kethūbāh' of Judaism.

A.G.31. "Si un père à la maison du beau-père de son fils du biblu a amené,porté,la femme n'étant pas encore livrée---s'il lui plaît tout ce qu'il avait porté,plomb,argent,or,non les aliments, en capital il reprendra:aux aliments il ne touchera pas."

From which we may infer biblu was a fairly substantial gift & consisted of valuables as well as comestibles. It is presented by the bridegroom's father :inC.H.159-161 by the bridegroom.

A.G. 32 "Si quelqu'un à la maison de son beau-père a porté des cadeaux(zubullû), et si sa femme vient à mourir---s'il veut, il peut reprendre l'argent qu'il a donné,blé, mouton, et tout ce qui est aliment on ne lui rendra pas: il reçevra seulement l'argent."

It is clear that Betrothal could be dissolvedon simple return of

what had been given(with exception of comestibles). This right is open to the father of the man but it is questionable whether it was available to the father of the woman. There is no mention here of a double repayment on the part of the bride's father for refusing to carry out the contract,as inC.H. 160-161.

'Biblu' & 'zubullû' seem here to be interchangeable terms .Both Ehelolf & Koschaker treat 'biblu' in article 30 as an interpolation & think that zubullû' has fallen out. The Assyrian text renders this very likely. Scheil joins them in his Index & defines "Biblou- zouboullou argent, blé, moutons,aliments donne à la future par son beau-père."

Such gifts are met with frequently in our sources & 'zubullû' are related etymologically to the נשׂוא of the Talmud,the root being נשׂא ,to bear or carry. They were often very costly as may be judged from the references here & in the Talmud (Krauss Jud. Arch. II.42)

The form of Betrothal in A.G. is as in C. H.-'Arrhalverlöbniss' It is not defined with as great detail. Additional features are here A feast seems to have been a usual accompaniment & the matter seems to have been attended with ceremonial(A.G. 43-44). But the biblu & tirhâtu are still employed although in our present source the emphasis is laid on the biblu. The tirhâtu is the inalienable property of the bride & was probably given to her. "La tirhâtu assyrienne ressemble à la khetouba des Hebreux,à la dos ex marito des Germains" (Cuq, R.A. 1922 p.47)

When biblu is given & betrothal effected we find the terminology of married life applied to the betrothed. With refence to her fiancé the woman is 'aššatšu',his wife':with same reference her father is 'emišu',his father-in-law'. The reason for this we have already indicated in our study of C.H. where the same practice is present.

Dowry (širku) is here also (A.G.30)& its disposal is regulated, as in C.H.

The verdict of Cuq in regard to this source may well be applied to its treatment of Betrothal. "Il se distingue du Code Babylonien par la façon dont les matières sont traitées: elles ne sont jamais envisagées dans leur ensemble.La loi se borne à régler des cas particuliers où l' intervention du législateur a paru nécessaire. Pour le surplus on se conformait sans doute à la coutume." (R.A. 1922 p.46)

Additional Note on'Hûrûppâte'

Some light may fall on this from O.T. & Amarna Letters. In Leviticus XIX,20,we meet with a שפחה נחרפת לאיש in the expression'a bondmaid be betrothed to a husband'- שפחה נחרפת לאיש which B., B., &Driver render 'a maidservant acquired for a man'. ארש the usual word for betroth is substituted here by חרף According to the Talmud (Kidd.66a) in Judah the betrothed was named חרופה The root is the same as in ḫurappâte.

The passage in the Amarna Letters occurs in Knudtzon No. 3 line 12 where Amenophis writes to the king of Arzawa 'Deine Tochter die man meiner Sohn zur Frau überlassen wird ihr soll zuteil werden(?) Öl für den Kopf. Zu dir habe ich eine Kanne aus Gold bringen lassen als Geschenk für dich". It would seem from this as if the acts mentioned in 43,44, were not alternatives but both acts parts of the betrothal form.

Probably this is an archaic form which was already passing away into disuse. It is not found in later practice as shown in Contracts of a subsequent period. It might be possible to think of 'ḫuruppâte' in connection with the bronze plate on which the man brought his tirḫâtu: (v.p.65) anointing the head of the woman & presenting the tirḫâtu at a feast would constitute betrothal. No ambiguity would

~~Remain in A~~

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then remain as to the party who received the tirhâtu. It was given in this ceremony to the bride. This accords with what has been stated in the foregoing.(v.p. 8)

HITTITE CODE.

In this source are clearly traced the main features of the C.H., although there are modifications.

In the Betrothal Contract 'kûšâta' corresponds to the 'tirhâtu': in this source it appears to be given to the bride.

There is no mention of gifts corresponding to 'biblu' or 'mattan' but the parents of the bride appear to take an active part in the Contract.

The institution of Dowry is also present.

There is evidence here, too, that cases were present in which the usual form of Betrothal was not observed

As the term is rendered by Hroznyas 'bride-price' (prix d'achat) & 'bride-gift' (cadeau conjugal) in articles 34 & 36 respectively, it has seemed preferable to retain the original term.

C.Ht. 29 "Si une fille à un homme est liée (fiancée) et il lui donne le kûšâta ensuite cela le père et la mère combattent et à l'homme ils ôtent, alors le kûšâta 2fois ils restituent (3fois-article XXIII)

The giving & receiving of the kûšâta constitute a Contract. This Code is mainly concerned with Contracts, and prices, & for their observance it introduces penal sanctions (cp. C.H. 160).

It would appear from the preceding enactment that the bride received the 'kûšâta' and her parents had power to dissolve the Contract.

C.Ht. 30 "Mais si un homme la fille ne prend pas encore et la refuse alors le 'kûšâta' qu'il avait donne il perd"

The breach of Contract is here on the man's side & the provision is as in C.H. 159.

C.Ht. 28a " Si une fille à un homme étant promise un autre l'épouse, puis quand il l'épouse, alors quoique le premier homme (lui) eût donné, elle (il) lui

restitue, tandis que le père et la mère ne restituent pas".

28 b, "Si le père et la mère à un autre homme la donnent alors le père et la mère (le) restituent".

28 c, "Mais si le père et la mère(cela) refuse,alors ils(=on) la lui ôtent".

This seems a little complicated but the parallel with C.H. 159-160-161 is clear enough. The older Code does not contemplate the bride acting for herself unless in special circumstances(C.H. 137, 156,172): here she appears to have power to break the Betrothal Contract or,at least, bring about its rupture. In that event she makes reparation. In 28b the parents give their daughter to another in this case the reparation is from them, and if they refuse(28c) the bride may be taken from the second, and,presumably, given to the first suitor.

The form of Contract of Betrothal does not appear in the case of the marriages referred to in articles 31-33,35; these cases will be considered in our the treatment of Hittite Marriage. According to C.H.159 there were marriages in which no tirḫâtu was given. The O.T. reveals similar usage & knows cases where Mōhar is not given(v.p. *22*)

Dowry is present also and its disposal is regulated in C.Ht. 27.

The subject is not dealt with in exhaustive fashion by the Code. No Contracts are available from which additional information might be gained as to practice & procedure.

In the regulations of the Code the man acts for himself & his parents are not mentioned as active in the matter. It may be strongly doubted that the bride acted for herself although she seems to have a certain power in the matter. Her parents are

associated with her and have power to rupture the Betrothal Contract(29) The enactments given show a close resemblance to those of C.H.,and we may well believe the practice here did not vary from that off Babylon to any great extent. The 'kûšâta' appears to be given to the bride although it is not stated to be her inalienable property as in A.G. 39. There is no mention of gifts to the parents. The custom of giving such gifts was general in these ancient civilisations & may be taken as prevalent also in this case. Tirḫâtu is mentioned alone in most parts of C.H. yet 159-161 indicate that it was accompanied with gifts. Mōhar occurs without Mattan in the O.T.:we may be sure that the one accompanied the other in practice.

We shall find the 'bride price'(מהר) here as in our other sources & we shall examine first such references as we find in our primaby source. To complete our view of this & to compensate for absence of reference in the O.T. we shall use the Assouan Papyri. Thereafter to indicate the later development we shall briefly consider the procedure of later Judaism.

We shall find reason to conclude that the earlier custom is closely in accord with what we have already observed elsewhere & we shall further mark a development in the change of the contracting parties. We will also note that the form of the מהר might vary in content. The dowby is present here also as in our other sources

There is nothing in our primary source as to penalties for breach of promise but it is to be noted that whereas in the O.T., as in C.H. & A.S., the ~~covenant~~ CONTRACT gives rise to terminology applicable to the state of married life, in the O.T. betrothal can only be dissolved from the side of the bridegroom.

We shall find marriage without מהר.

Our source knows something corresponding to 'biblu'&'tirḫâtu' Here we hame Mōhar' & 'Mattan'.(מהר — מתן)

Gen. XXXIV,12,"Ask me never so much dowry(מהר וגו') & gift(מתן)
& I will give according as ye shall say unto me".

This must have been the prevalent custom although it would not be left to the recipients to assess the amount. It was, as we shall see fixed by usage.

Exodus XXII,16, (Heb.15) " If a man entice a maid that is not betrothed & lie with her, he shall surely endow (אירשנה) her to be his wife. If her father utterly refuse to give her unto him he shall pay money according

to the dowry of virgins (אמהר בתולות

מהר was plainly associated with בתולות & the phrase מהר בתולות is used in a way that suggests we are dealing with an established custom. The Mōhar is plainly here a money payment, and it is paid to the father who gives or withholds her in marriage.

The third & last reference to מהר in O.T. occurs in 1Sam. XVIII, 25, " The king desireth not any dowry(מהר) but an hundred foreskins of the Philistines to be avenged of the king's enemies". This again is paid to the father & it is Saul who gives his daughter in marriage. In these passages we find evidence of a prevailing custom & מהר like tirḫâtu seems to be an essential. The 'Mattan' may have been more a matter of custom like 'biblu' in C.H., while 'Mōhar' seems to have been matter of law, so far as one can distinguish law & custom in early Israel.

Though the word itself only occurs in these three instances we meet the custom frequently enough in our sources.

In reference to 1Sam. XVIII, 25, which we have cited we find various instances in our source & in Early Arabia. " Neben dem Mahr können noch weitere Bedingungen gestellt werden, und an stelle der Zahlung kann eine andere Leistung treten z.B. eine Waffentat oder Knechtsdienst" (Wellhausen, NGWG, p.433-4). An example of the latter is found in Gen. XXIX, 18 " And Jacob loved Rachel & said, I will serve thee 7 years for thy younger daughter Rachel". The Mōhar here is a prestation of service. An example of the former is found in Joshua XV, 16, "And Caleb said, he that smiteth Kirjath-sepher & taketh it, to him will I give Achsah, my daughter, to wife." Mōhar here is a feat of arms.

An indication of the amount of the Mōhar is afforded by Deut. XXII 28 where in the case of forcing a virgin " the man shall give unto the damsel's father 50 shekels of silver & she shall be his wife."

In the story of Gen. XXIV we have no mention of 'Mōhar' but gifts are present in abundance both to the bride & her brothers. It is questionable if her father is alive & perhaps the name of Bethuel in verse 50 is an interpolation or a corruption of אחיה . In any case Laban takes the chief part & from what we know of his later conduct he was not the man to forego any of his legal rights. The gifts here are called" מגדנות"(v.53). In this connection it may be of interest to note the practice in modern Arabia. "On m'a dit que chez les Faïz le mahr n'est pas exigé dans les mariages qui se passent dans le sein du clan, où ils se considèrent comme ne formant qu'une grande famille"(Jaussen, Coutumes des Arabes ~~loc.cit.~~ p.49)

There is no mention of 'Mōhar' in Hosea although he mentions a price which he paid to redeem his faithless wife(Hosea III,2,A.V.) But as our fourth example of the use of 'Mōhar' we turn to the Assouan Papyri(Cowley's Edition) & here we get a glimpse of later practice. These documents belong to the fifth century B.C. & deal with the life of a mixed colony at Syene(Ezek. XXIX,10,XXX,6). The colony was subject to various foreign influences & its practice may not reflect exactly the stricter procedure of the Jerusalem Jews We take No. 15 which is the best preserved of these marriage contracts. The date of this 'Kethūbāh' is probably 441B.C.

" On the 25th of Tishri --said Ashor -'-to Mahseiah Aramaean of Syene--as follows:I came to your house that you might give me your daughter Miphṭaḥiah in marriage. She is my wife & I her husband from this day for ever. I have given you as the price(מהר) of your daughter M. the sum of 5 shekels royal weight. It has been received by you & your heart is content therewith' Hereupon follows a list of valuables given to the bride, far exceeding the value of the 'Mōhar'

There are gifts, too, which the husband has received & provision is made for their disposition. The form may be that of "Marriage by Purchase" but the woman is invested with larger rights than we have seen in the foregoing & succeeding periods. That a woman should have the right of divorce shows the extent of foreign influence at Syene. We merely refer to this at the moment to indicate the value of our source as a criterion of Jewish practice.

No.18 is defective & contains only the end of a 'kethûbāh', setting forth provisions of divorce. No.36 deals with gifts to bride but is very fragmentary. Noteworthy among the gifts is "one cup of bronze worth the sum of 15 ḥallurim: 1 bowl of bronze". Similarly in No.15. Bronze vessels we saw played a part in Assyrian betrothal (A.G.42,45)

The 'Mōhar' here still seems an essential in effecting Betrothal: gifts are both given & received.

According to the Mishnāh & Talmud, Betrothal may be effected by a) כסף b) שטר c) ביאה. The first name was the prevailing form: the use of the last was frowned upon by the Rabbis. Cases in which the second are used are rare. Each form was accompanied with the formula " Be thou betrothed unto me by this (naming the form)- according to the law of Moses & Israel" & without the repetition of the formula it had no validity. A 'perûṭa' was the usual coin & that was the minimal value. The giving of the perûṭa or its value & the repetition of the formula constituted a valid betrothal (Ḳiddûšîn I,1)

Gifts accompanied the giving of the perûṭa or other form. The word for these נדוניה is derived from the same root as that which we find in the Assyrian 'zubullû'. These gifts were often very substantial & costly: the Talmud speaks of 100 waggons with jars full of oil & wine, gold & silver vessels, woollen garments (Krauss, Talm. Arch. II,42). The same distinction between comestible & non-comestible gifts as we met in

A. G. (passim), is made in regard to these gifts - סבלונות העשויין ליבלות. ס״ שאין עשויין ליבלות. In the event of the marriage not being carried through only the latter gifts may be demanded back (Talmud, Bābā Bathrā 146, Jacob, ZRVW, 1925, p. 382).

The 'Mōhar' in this period has changed to the sum fixed by the "Kethūbāh": the idea of price is still here but it is guaranteed to the woman. The Bethdin fixed this at 200 denarii for a virgin, 100 denarii for a widow, although certain priestly families doubled these amounts (M. Kethūbōth I, 5)

Our purpose here has been to show the development of 'Mōhar' until we see here as elsewhere it has gradually changed from a 'bride price' to a 'bride gift'. Simultaneous with this development we can observe the same process in another direction. In the earlier citations from our source the matter is arranged between the fathers of the parties. Abraham does not consult Isaac (Gen. XXIV, 4,); Judah takes a wife for his son (Gen. XXXVIII, 6); Jacob acts on his father's instruction (Gen. XXVIII, 1) In Gen. XXXIV, 6 it is Hamor the father of Shechem who acts for his son. Esau might be 40 years of age but his conduct in marrying on his own initiative was plainly a breach of custom (Gen. XXVI, 34). In the absence of a father Hagar takes a wife for her son (Gen. XXI, 21). Samson asks his father to get for him the woman whom he has seen & desired (Judges XIV, 2). From all which we may conclude that in the early time the Betrothal was arranged by the fathers & the price was paid by the father of the man to the father (or brothers) of the bride. There was a current price for virgins. Gifts also appear to have been given with the 'bride price' & the usage resembles that of C.H. & A.G.

Probably even in the earlier time manners were changing: it was possible for Esau to act independently although it was as yet unusual.

In the other parts of the O.T. the man is usually represented as acting for himself(Hosea 1,2; IKingsIV,15;I Chron.VII,15; Deut.XXII,13): where it is otherwise we may presume that we are dealing with the case of a minor. Likewise in the example from the Assouan Papyri. There, however, the Mōhar is paid to the father of the bride-she seems to be a widow-.This procedure accords with what we observe in our source. The father receives the Mōhar:she does not act for herself (JudgesXXI,1;1Sam.XVIII,27: 2Kings XIV,9: 2Chron.II,35). But in later Judaism the bride herself,unless she is a minor, receives the 'perutá'or 'deed'. Betrothal may be effected either personally or by proxy in either case (M.Ḳidd.II,1). Both parties have now become the contracting parties.

As for dowry this,too, is present in our source. (JoshuaXV,17ff) The usual form of dowry was a female slave for the wife's personal service(Gen.XVI,1:XXIV,59:XXIX,2) & in all cases the wife had free disposal of her slave. The complaint of Rachel & Leah (Gen.XXXI,14)would indicate that they expected something in the nature of a dowry & were being deprived of a right. Raguel gives half his goods for dowry(TobitVIII,21,X,10)(v.p.76) Acc. to the Talmud marriage took place 12months after betrothal (שנים עשר) in case of a virgin: in case of a widow 30 days was the interval. If it is not consummated then by Nissúín(נשואין) the man is at charges for her maintenance. But both in O.T. & Talmud she is under same restrictions as married woman. The terminology of the O.T. is as we have seen in C.H. & A.G. The betrothed damsel who has been forced is "his neighbours wife" (אשת רעהו Deut.XXII,24):David asks for the delivery of Michal

in these terms " Deliver me my wife, אשתי Michal which I espoused" 2Sam.III,14). The terminology is not such in the Talmud where betrothed is called ארוסה, less frequently מקודשת.

The Betrothal can be dissolved from the side of the man only, and that by bill of divorcement (גט). "A Betrothal is not a mere promise to marry but it is the very initiation of marriage" (Mielziner, Jewish Law of Marriage & Divorce, p. 76).

Later Judaism found such a strain too great to bear & it soon discovered the undesirability of allowing people who were betrothed to live in separation for 12 months thereafter. The Roman invasion & persecutions often led to irreparable separations: young women found themselves bound to partners whom they had no hope of seeing again, and whose death they could not prove (cp. Forsaken Woman, p. 105). In the Middle ages Êrûsîn & Nissûîn take place on one &the same day, with or without a short interval between (Abrahams, Jewish Life in Middle Ages, p.177). Something, however, was required by way of previous arrangement or engagement, and we find greater stress laid upon the "shidduchîn" (שידוכין), which formerly are referred to in Talmud as the preliminary negotiations. By the third century A.D. it was regarded as improper that a marriage should take place without these "shidduchîn", and it may be assumed that they reach back beyond the time of the Talmud. In the form mentioned or as "tenaîm" (תנאים) we observe that a bimding Betrothal was not entered into without forethought. "In place of a half-complete union, to be consummated after an interval, mediaeval custom adopted a legal contract binding the couple to marry at some fixed or unfixed date, and defining a monetary penalty to be

paid by the party desirous of abandoning the match"(Abrahams,p.177). The "shidduchîn" here were accompanied by the "Knas-Mahl" or "penalty feast". Even to this day devout Jews look with dislike on such expedients & hold to the inviolability of the ancient law of Moses (Neubauer,op.cit.p. 201).

That,lastly, there could be Marriage without this preliminary Betrothal is apparent in the case of the "War Captive"(Deut. XXI,10) In Early Arabia such marriages were frequent: they were without Vâli'or'Mahr' but gradually such marriages were co-ordinated with those established by regular Betrothal. Cases are on record where the captors sent back the captives in order that marriage in the due & proper form might be arranged. A reproach adhered to children of the war captive, but this was removed when Marriage took place by formal Betrothal & presentation of 'Mahr'.(Wellhausen,op. cit. p. 436). Whether such cases occured in the case of our present source we are unable to say. (ep. "Marriage of War Captive,p. 79)

CONCLUSION.

In the earlier portions of the O.T. record it may appear at times difficult to draw an exact line of demarcation between Betrothal & Marriage. The two acts seem occasionally to be telescoped into one (Gen. XXIV,63-67: I Sam. XVIII,27). Such instances have led Neubauer to suggest that early Hebrew marriage was constituted by simple Betrothal(the third form mentioned in the Mishnāh(v.p. 18). It is very questionable if there is any justification for this thesis which he has treated in his "Eheschliessungsgeschichte". A comparison with the Assyrian Lawbook shows that while that source plainly states the price of a woman(A.G.25)-cp. Exodus XXI,16: Deut. XXII,28- it also, as plainly, shows the use of Betrothal & Marriage Contracts. The emphasis is laid on the Contract of Betrothal in both O.T. & A.G. and indeed in all these Codes. That emphasis may almost obscure the presence of the Marriage Contract in some cases. The distinction is clearly drawn by the Deuteronomist(Deut. XX,7: XXVIII,30) and is inherent from the beginning of the record. The later law makes it clearer still.

A distinction in the case of the O.T. Contract of Betrothal has been indicated. It cannot, as in the case of the other Codes, be dissolved from both sides. Here Betrothal seems to give rise to a partial status but the complete status of marriage is induced only when by Marriage Contract the wife passes from the "potestas" of her father to the "potestas" of her husband.

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In all these Codes which have been examined an effort has been made to show the form & ceremonial with which the Contract of Betrothal was arranged. These forms have been found to be similar in each Code;

inasmuch as the prestation made by the man or his father in each case appears originally to have signified "bride price" (though later it comes to assume the form or meaning "bride gift", it may, (be) legitimately, be inferred that it originally represented a purchase and the Contract is regulated by the conditions that govern Sale.

Contract and Status of Marriage.

Code of Hammurapi.

The parties having adhered to the Contract of Betrothal, the Marriage Contract is duly erected & the status is created. No marriage was valid without such a Contract(C.H. 128). This Contract is 'per verba de praesenti'& by Conveyance the status arises. The content of this status as it affects husband and wife the discussion will unfold. By the Contract are regulated also the rights of inheritance of children,but these are not am immediate concern to the present work. No fixed interval is stated,as in Talmud,between Betrothal & Marriage: this will have varied in each case.

Examples of these Contracts may be given in the first place.

M.89(H.G.III,3) "Iltâni, die Schwester der Tarâm-Sagila,hat von Šamaš-tatum,ihrem Vater,Warad-Šamas,der Sohn des Ili-idinnam,zur Ehefrauschaft genommen. Iltâni,ihre Schwester,wird,wenn sie ärgerlich ist,ärgerlich, wenn sie vergnügt ist, vergnügt sein. Ihren Stuhl wird sie zum Hause Marduks tragen. Die Kinder, die sie geboren haben und gebären werden, sind ihre (beider) Kinder. Wenn sie zu Iltâni ,ihrer Schwester, "Du bist nicht meine Schwester", sagt (lacuna.....sa)gt, wird er sie marken und dann für Geld fortgeben. Und wenn Warad-Šamaš zu seinen Ehefrauen " (Ihr) seid nicht meine Ehefrauen " sagt, wird er 1 Mine Silber darwägen. 11 Zeugen, alsdann:

Und wenn sie zu Warad-Šamaš, ihrem Ehemann,"Du bist nicht unser Ehemann" sagen, wird man sie binden und dann in den Fluss werfen. "

That is from the time of Hammurapi's predecessor and is typical though it deals with the marriage of a priestess who brings a secondary wife with her for the purpose of bearing children. Such priestesses

were/

sought after for their wealth but may have been, through a vow of chastity or artificial sterilisation, incapable of bearing children. For this purpose they brought a 'Šugetum' (translated 'concubine' X who is called 'sister' to the wife.

PSBA 29. (ĒG Vol.3, No.5) "Kikkinu der Sohn des Abaja, hat bei seinem Lebzeiten die Rechtsverhältnisse der Bitti-Dagan, seiner Ehefrau, festgesetzt. K. ist ihr Ehemann, B-D ist seine Ehefrau. Gesetzt K. ihr Ehemann sagt zu B-D. seiner Ehefrau "Du bist nicht meine Ehefrau" so geht er mit leeren Händen aus seinem Hause hinaus; zu den Ochsen des Palastes wird sie(?) ihn------. Und gesetzt BD., seine Ehefrau, sagt zu K., ihrem Ehemann, "Du bist nicht mein Ehemann", so geht ihr----heraus; zu den Scheunen(?) des Palastes wird man sie hinaufführen. Die Kinder die BD. dem K. ihrem Ehemanne, gebären wird, werden (gesetzlichen) Anteil am Hause des K. haben.

This is from the time of Hammurapi & embraces the parties mentioned above, defining their rights & ~~status~~ rank-husband, wife, children.

The second contract represents the type of marriage contemplated by the Code-monogamy. The former Contract is a special case & does not constitute an infraction of the principle. Whether in practice monogamy was strictly observedmay be open to doubt. At a later date while monogamy is still the law, we find cases of plurality of wives. At Harran in the Census Lists we have such cases (Johns ADB 64) & according to Assyrian Deeds & Documents, 229,3, slaves not infrequently possessed two wives. According to VS.VI,3, Nabu-zer-Esisa in the second year of Nabopolassar married a second wife without divorcing his first wife although she was childless. But such departures from the principle of monogamy are not revealed in the Contracts of Hammurapi's time. For the presence of the principle it may be sufficient to quote C.H. 144. If a man take a wife & that wife give a maidservant to her husband & she bear children: if that man set his face to take a

concubine they shall not countenance him. He may nottake a concubine(cp.145,6,7)

An examination of the terminology employed will make clear the meaning of the marriage(Eheschliessung, Eheschliessungsakt) C.H. 128 "Šumma awîlum aššatum îḫu-uz","if a man takes a wife":so the action of the man is described. "Aššatam aḫâzu"= "to marry". "Aḫâzu"(Heb.אחז) occurs also with "sinništum"(141,167):with Šugetum(144,145): with Sal-Me(144,5,6). In all these cases we are dealing with the same act. In marriage,or in marrying, the man "takes" his wife.

Corresponding to this is the expression used of her "Vâli" or guardian. The father(or guardian) gives(iddin) his daughter to the man & causes her to enter into the house of her husband(ana bît mutim šurubu). It is shown elsewhere that an institution similar to Hebrew"chuppāh" may have had place in Babylonian usage(v.p.92).

The marriage therefore means the giving of the bride by her father and the taking by her husband:in consequence of these acts she ~~ent~~ enters into her husband's house.

Further the purpose for which this is done is stated. She is taken "ana aššûtim û mutûtim",or simply "ana aššûtim","to wife".

H.G.III,7 " Bastum die Tochter der Bêlissunu, der Tochter des Uṣibîtum, hat Rimum, der des Šamḫatum zum ehelichen Gemeinschaft genommen".

The bride having entered the house of her husband, marriage now becomes the married state(Ehestand). This Status will now be examined in relation to the rank,rights, and duties of husband & wife.

a) Husband's Rank & Rights.

The husband is "Bêl aššatusu" and holds a"potestas maritalis" over the wife corresponding/

to the 'patria potestas' under which she lived before marriage when her father was her 'Baal' or 'Bêl'. But this dominion of the husband is in no way arbitrary & is strictly regulated. Indeed the position of women in Babylon, as we shall see, was very high, in some respects higher than in modern civilisation as late as the 19th century.

C.H. 117 "If a man be in debt & sell his wife, son or daughter, or bind them over to service, for 3 years they shall work in the house of their purchaser or master; in the fourth year they shall be given their freedom".

That is a limit on his dominion. The wife is given not to be his slave but 'to wife'.

According to C.H. 141 he has right to reduce a foolish recalcitrant wife to the position of maidservant in his house-but not to sell her- & deprive her of her wifely ~~status~~ rank.

He has right to usufruct of her dowry (C.H.138,149) & a right to exemption from liability for her pre-nuptial debts (C.H.151)

He has right of divorce though this is limited & regulated (C.H.138-140)

He had further the right to adopt the children of his maidservant even when his wife had borne him children, & this he did by repeating over them the formula "My children". In the division of goods, however, first choice falls to the children of wife with equal shares to all (C.H.170)

He has the right to intercourse with his wife (C.H.142), & the further right to expect children. If the wife does not present him with offspring he is entitled to take a secondary wife or concubine, although that right is voided if the wife gives her maid & she bears in her stead (C.H. 144-5)

b) Duties of Husband.

It is characteristic of these ancient Codes that they say more about the husband's rights than about his duties but that holds good least

of all in the case of the present Code. Although little is said directly these duties may be deduced from the corresponding rights of women.

We may assume that it was the duty of the husband to provide nothing less than 'food, raiment, & her duty of marriage', which appears to be a minimal requirement in Exodus XXI,10.

C.H.134 " If a man be captured & there be no maintenance in his house, & his wife enter into another house, that woman has no blame". But if there is maintenance she is culpable C.H.133). C.H. 136 deals with desertion: in this case man has no right to resume his wife. According to C.H. 150,171,172, the husband not only provided for his wife during his life but made provision for her widowhood, & where this was not done the law makes such provision a charge on his estate. Thus it was the duty of the husband to provide for her as wife & as widow.

C.H. 148 "If a man take a wife & she become afflicted with disease, & if he set his face to take another, he may. His wife, who is afflicted with disease he shall not put away. She shall remain in the house which he has built & he shall maintain her as long as she lives".

C.H.149 "If that woman do not elect to remain in her husband's house, he shall make good to her the dowry which she brought from her father's house & she may go."

Whether the tirhâtu was returned to the husband or not is not indicated. Probably not, as this is not a divorce & reveals rather a failure in duty on the part of the husband.

c) Wife's ~~Status~~ Rank & Rights.

As indicated the wife's rights & duties are relative to those of the husband. Her ~~status~~ RANK is clearly defined in the Contracts. She is given &

takenm 'to wife'. That her position might be one of influence is obvious from the Contracts which show that women often played a large part in the life of Babylon. The priestesses in particular, who were frequently married, possessed large resources & were active in business. Ordinarily the wife is mistress of her home & her position is safeguarded by the Code.

Her ~~status~~ RANK as wife may not be encroached upon by the maid who has borne children to her husband & presumed upon her advantage over the lawful wife (C.H. 146-7).

The wife remains owner of her dowry(162,3): she can act as a witness (Contracts passim), a privilege first allowed in France under Code Napoleon in 1807. She can even exercise 'patria potestas'(C.H.29,172) cp. M.56(H.G.III,552)'Den Mâr-Sippar hat von Munawwirtum, seiner Mutter, Marduk-nâṣir, der Sohn des A. auf 1 Jahr gemietet. Als Miete für 1 Jahr wird er 2½ Šekel Silber darwägen. Von seiner Jahresmiete hat sie ½ Šekel Silber 1 Še erhalten"

She has the right to protection & maintenance in case of illness(148,9) She has right to leave her husband in certain circumstances (142) & in divorce she has right to compensation.(137-140). She has a right to vindication from slander(127) & may not be sued for her husband's prenuptial debts(151). 171 gives her liferent of her husband's property. In the event of no 'nudunnû' being given by her husband she is entitled to a son's portion, & further she is entitled to protection of her rights against her children (172)

The wife is possessed of special property rights & these will form the subject of our investigation. They are in the Code & are 'dowry' &'gift' 'Šeriqtu', 'Nudunnû'

1. Šeriqtu (Dowry)

The dowry was probably fixed when the tirḫâtu was paid, but it was not given until the bride entered the house of her husband (cp. H.G. III,9) It seems to have consisted of property or moveables as opposed to a money payment.

H.G. III,452 "1/3 Gan Feld in Zimgair, das aus dem Lijâmkanal bewässert wird, neben dem Felde des Z.--ist das Feld des S.--- hat Nûr-ilišu --der Belâ seiner Tochter gegeben"

H.G.III,473, "-2-kuh" 1 Kuh von 3 Jahren, 5 Stück Kleinveh, 2 Bett,2 Stühle,3 holzerne--2hölzerne--dies hat Z. der B. seiner Tochter gegeben". cp. H.G. III, 461.

Such was the content of dowry although it might be simple enough to consist only of a female slave, as in O.T.;cp. H.G. III,493.

That the dowry was a general institution may be judged from C. H.180.

~~This is regulating a particular case~~

C.H. 180 " If a father do not give a dowry to his daughter, a bride or devotee ,after her father dies she shall receive as her share in the goods of her father's house the portion of a son, &she shall enjoy ~~e~~it as long as she lives. After her death it belongs to her brothers."

From which we infer that a dowry was usually given to a daughter on becoming a bride or a devotee.

C.H. 162 "If a man take a wife & she bear him children, & that woman die her father may not lay claim to her dowry. Her dowry belongs to her children".

The husband may enjoy the usufruct during marriage but it is reserved for the children of the marriage.

C.H. 163 " If a man takes a wife & she do not present him with children & that woman die: if his father-in-law return to him the

'tirḫâtu'--her husband may not lay claim to the 'šeriqtu' of that woman". If the father-in-law fails to take the initiative the man may deduct the amount of the 'tirḫâtu' & return the balance.(164) From this it is clear that the value of the 'šeriqtu' was greater than that of the 'tirḫâtu'.

Regarding C.H.167 an interesting development is found in later Babylonian practice. C.H. 167 reads as follows " If a man take a wife & sh she bear him children & that woman die: & after her death he take another wife,& she bear him children, the children of the mothers shall not divide the estate. They shall divide the dowries of their respective mothers & they shall divide equally the goods of the house of the father." According to the later Law the sons of the first wife take 2/3 & the sons of the second wife 1/3 of the goods of the father's house.

This later law gives a further advantage to the wife by its amendment of C.H. 172 which enacts"if a woman set her face to go out ,she shall leave to her children the gift(nudunnû) which her husband gave h her; she shall receive the dowry(šeriqtu) of her father's house & the husband of her choice may take her". The later documentamends& gives her ' the dowry which she brought from her father's house & whatever her (first) husband gifted to her, & the man of her choice shall marry her'.(SBAW,1889,p.823ff.)

173-4 regulate disposal of dowry:176,176a deal with special cases 178-182 deal with the particular class of devotees & regulate the disposition of dowry.(v. Marriage of Priestess p. 42)

The word 'šeriqtu' does not occur in the Contracts but in its stead 'nudunnû' is used. In the Code it is the property of the wife; the husband has the usufruct but must restore it when required(148,149) If children are born they inherit it: if not it returns to her

father's house(163)

In the special case of priestesses they may have only liferent of their dowry & at death it reverts to her brothers: if power to dispone has been given she may bequeath it as she desires. There should be no children of such a marriage. A votary of Marduk had such freedom of disposal.

2. Nudunnû

In addition to dowry another property right adheres in the wife, called in the Code 'nudunnû'. In three laws we have reference to a 'gift' from the husband to wife, whch resembles closely the 'Tosefta Kethubah'. Only in the last two laws is the gift named 'nudunnû'.

C.H. 150 If a man give to his wife field, garden, house or goods, & he deliver to her a sealed deed, after the death of her husband, her children cannot make claim against her. The mother, after the death of her husband may will to her child whom she loves but to a brother she may not".

C.H. 171c--- 'the wife shall receive her dowry(šeriqtu) & the gift (nudunnû) which her husband gave & deeded to her on a tablet, & she may dwell in the house of her husband & enjoy (the property) as long as she lives. She cannot sell it, however, for it belongs, after her death, to her children".

C.H. 172 " If her husband have not given her a 'nudunnû', they shall make good her 'šeriqtu' & she shall receive from the goods of her husband's house a portion corresponding to that of a son---if that woman set her face to go out she shall leave to her children the 'nudunnû' which her husband gave her: she shall receive the 'šeriqtu' of her father's house & the husband of her choice may take her."

Whether 150 refers to the same gift as 171,172, cannot be decided with certainty. There is a distinction between the former & latter in the disponing of the gifts. In 150 wife may leave it to the child she loves. The law plainly contemplates the possibility of the children disputing this settlement. 171-172 on the other hand have in view a gift that is inherited by all the children, as the dowry is inherited, & does not at least expressly, contemplate the children disputing the legality of the 'nudunnû'. From 172 we may be justified in concluding that the

'nudunnû' was an essential in marriage & was intended to form a provision for widowhood. It falls to the wife on her husband's decease & she enjoys it only so long as she remains a widow, & on remarriage it reverts to her children.(cp. p. 29) It may have been appointed at the initiation of the marriage or shortly thereafter- when children were not yet born- whereas 150 seems a free gift made by the husband when children were in existence & could dispute the legality of his gift. With the 'nudunnû',on the other hand they could not quarrel as it was a legal enactment. Perhaps the 'nudunnû' is Sumerian & 150 may represent a Semitic equivalent. The presence of gifts is more prominent in Sumerian than in the Northern Semitic civilisation & the C.H. is seeking to embrace & unify both procedures.(v. further p. 41)

R 95 (H.G.III, 482) "2 Sar Hausgrundstück.....,in Sippar-jahrurum neben dem Hause des W.....(1) Sklavin U.,(1) Sklavin I. (1) Bronzkessel(?) im Gewicht von 5 Minen (1)....Stein,1...Stein,(1) Knospen Stein,(1) Bett aus "Schlangenzahn", alles dies hat Ibni-Šamaš, der Wahrsagpriester ....der Ḫugultum, der Nebenfrau, seiner Ehefrau, gegeben. Solange H. seine Ehefrau lebt, behalt sie all ihren Besitz in ihrer Hand. Für alle Zeitsind Marduk-muballiṭ und Ibni-Šêrum ihre Kinder, ihre Erben.....sollen nicht gegen sie Einspruch erheben".

OT VIII,34b(H.G. III,456) " 1 Sar bebautes Hausgrundstück....1 Sklaven 1Sklavin A., 5 Hemden, 10 Hüte,1...Stein, 1...Stein,usw.---hat Awil-Anim der Munawwirtum seiner Ehefrau gegeben. Unter den Kindern des Awîl-Anim darf sie es demjenigen, der ihr Ehrfurcht erweist und ihr Herz befriedigt, geben."

These contracts seem to be based on C.H. 150 & spring from the North. It may be possible to reconcile these 3 articles by saying that while the 'nudunnû' is reserved for the children on the mother's decease , the wife could choose a particular child from among her children. The f fact,however, that C.H. 150 does not mention nudunnû & that it seems to imply a benefaction that may be legally contested,while the nudunnû implies something essential to marriage & is therefore above contestat-

would indicate that we are dealing with two different 'gifts'. This, as already stated, would be easy of acceptance if we are justified in holding that nudunnû is Sumerian practice & that in C.H. 150 we have a Semitic assimilation to that practice. The contracts from Nippur confirm us in this view. An example is here given of Sumerian practice UMBS VIII,8 (Z.A.1924,p. 192) "Ilušu-bâni hat die M. geheiratet. N., S., und G. sind die Erben der M. Ilušu-bâni hat der M. -die Grundstücke- der M., seiner Ehefrau, dem N.S.&G. hat er ihr(?) eingebracht. Nachdem N. der älteste Bruder seinen Vorzugsanteil genommen haben wird, werden sie zu gleichen Teilen teilen usw."

Here the mother is liferented in the gift & after her decease the sons inherit together. (Koschaker Z& A. 1924 p. 192ff.)

The nudunnû may have been appointed at marriage or subsequent to it but wife does not enter into possession of it until husband has deceased. It serves as a provision for widowhood & is available to her only so long as she remains a widow. C.H. 150 seems on the other hand to have in view a gift given by the free grace of the husband & liable to contestation by the family, of which she has liferent & may dispose acc. to her selection of her children.

d) Duties of Wife.

These are mainly the converse of the the husband's rights, the right of the husband implying a corresponding duty of the wife.

She must be above suspicion & to clear herself may find the path of duty leading to the water ordeal(132). Where her husband has provided maintenance in his absence it is her duty to abide in complete fidelity (133,133a): If through stress she is forced during captivity of her husband, no maintenance being provided, to enter another house, on her husband's return she must return & leave her children by the second union.(135). It is her duty to put on the ornament of a meek & quiet

spirit' & comport herself becomingly(141).

Finally upon both husband & wife in their joint relationship it is laid as a joint obligation that they shall pay their household debts C.H. 152).

Special Types of Marriage

Thus far we have been considering the common form of marriage. Under this heading will appear those cases that seem to lack conformity with the aforementioned usage. Such cases are: a) Marriage of a Minor b) Marriage without tirḫâtu, c) Marriage without dowry d) Marriage of a priestess.

a) Marriage of a Minor.

Nothing is said in our source as to age, capacity, or consent & a man is represented as acting for himself while the woman is always under the guardianship of her parents. Widows or divorced women or women in a situation such as that of 156 may have acted for themselves but the Code always speaks of them being taken in marriage -" the man of her choice shall take her" (137,156,172). But the Code has in view cases where the man is under age & legislates accordingly.

C.H. 155 " If a man have betrothed a bride to his son & his son have known her,& if he(the father) afterward lie in her bosom they shall bind the man & throw him into the water".

C.H. 156 " If a man have betrothed a bride to his son & his son have not known her,but he himself lie in her bosom,he shall pay her ½ mana of silver & he shall make good to her whatever she brought from the house of her father,& the man of her choice may take her".

The punishment in case of 155 is as in 130. The wife is blameless for she dare not resist her father-in-law being under his 'potestas'. In 156 the case is different: the son may not now take his wife after his father has known her & she is sent away with due provision as a 'humbled' woman.

The father here acts for his son .'has betrothed a bride for his son'

The language here again is technical " ana mâri kallâtam ḫâru" & is only used in case such as the present, in marriage contracts of minors.

CT VIII,7b (H.G. III, 8) " Elmêsum die Tochter des Ammija,haben von Kiṣirtum, der Tochter des Ammija,ihrer Schwester (?) ,im Auftrage des Šumum-libši, ihres Bruders, Šamaš-liwir,der Sohn des R. und T. seine Ehefrau, fur Ibku-Anunîtum,ihren Sohn, 'zur Brautschaft' ersehen.usw."

This is clearly a contract of marriage. From this & similar contracts we gather that 'kallâtum' is used technically in all such cases where the bridegroom's father conducts the negotiations & betrothes the woman for his son. Further acc. to Babylonian letters & later Babyl. documents kallâtum= both bride & daughter-in- law.(Koschaker loc. cit. p. 128)

b) Marriage without Tirḫâtu.

C.H. 139 "If there were no tirḫâtu he shall give to her 1 mana of silver for a divorce".

This implies that there could be marriage without the usual form. In H.G III,11, we have a tirḫâtu of 1 šekel which would seem to be nothing more than a form or symbol used to establish the contract. That there should be,as here, no tirḫâtu at all is surprising.

There is nothing,moreover, to show that such marriage had less validity than a marriage effected by tirḫâtu. Such divergent forms are found elsewhere in similar circumstances. 'Mōhar' is not found in the case of the war captive in O.T. & a spacial regulation governs such marriages (Deut. XXI,10-14). cp. practice in Early Arabia already referred to(p.22) "Auch in Agypten unterschied man zwischen ἔγγραφος und ἄγραφος γάμος Die Herrin des Hauses unterschied sich von den Konkubinen und Sklavinnen eben durch den Besitz der Kethūbā, die ihr gegenuber dem Manne gewisse Rechte gab"(Krauss,J.A., II,p.464,note 356). The ' Friedelehe' of Old German Law was a type of marriage without bride-price, but it had not full legal effect,& to get such effect, the betrothal had to be repeated

in the regular way of bride-price.(Koschaker HG.,p.152).The Talmud knows a form of betrothal by 'usus'(Ḳidd. I,1), & two years cohabitation in A.G. 35 appears to constitute marriage. Such customs may have been in Babylon also. It seems to the writer that while it may be possible to refer this to the case of a widow- they were married with less formality than virgins- or a war captive there are other points to be considered here.

It may be that b & c) here bear some relation to one another. Acc. to 176 & 180 there might be marriage without dowry. It is clear also from the Contracts that sometimes the tirḫâtu was not paid until after the 'traditio puellae' or was b) paid at the 'traditio puellae'. According to Waterman,AJSL,XXIX,p.196f, where we have a promise to pay 1/3 mina of silver to bride's father, the bride seems to be already under the potestas of the man when the promise is made(Koschaker, p.131) H.G.III,4,6-8- would suggest that payment of tirḫâtu & 'traditio puellae were simultaneous acts. "(Die...)-ummi, die Tochter des Šamaš-nâṣir, hat von Šamaš-nâṣir und Erištum (....) Sânik-pî šu-Šamaš---zur Ehefrauschaft genommen. 10 Šekel Silber hat er als ihre Tirḫâtu dem S.,ihrem Vater,für die (...)-ummi gegeben. Bei Šamaš,Marduk & Hammurapi schworen sie" That reads like a discharge.

Certainly in later Babylonian Law we frequently meet with marriages in which no tirḫâtu is mentioned(Nbd.243) & although a dowry was fixed the father's circumstances might change for the worse, in which case the payment was correspondingly reduced(SBAW,1889,article 10). It became the custom then for wily fathers to give so much at marriage & promise the remainder: whence arose many a lawsuit(cp.Nbd.348)

There are contracts in which no tirḫâtu is mentioned as given.

CT VI, 26a " Aḫḫu-ajabi, die Tochter der Innabatum, hat I. ihre Mutter dem Zukâlija zur ehelichen Gemeinschaft gegeben. Wird Z. sie verlassen,so wird er 1 Mine Silber darwägen. Fasst A. Abneigung gegen ihn, so wird man sie vom Turme werfen. Solange I. lebt,wird A. sie erhalten.Nach dem Tode der I. hat alsdann gegen A. (niemand irgendwelche Ansprüche)."

This is case of a freed female slave : no tirḫâtu is paid but wife is

under obligation to support her former mistress while she lives. There might be many such marriages. Similarly in M.89 (H.G. III,3) no tirḫâtu is mentioned here but 1 mina of silver is to be given in the event of divorce. In these cases it would seem that the tirḫâtu is a potential rather than an actual payment: it may become actual in the event of divorce.

An alternative explanation is that given by Koschaker. It is put forth tentatively by him & it seems to do justice to most of the facts. He has sought to strengthen it in Z.A.XXXV,1, already referred to, & it may be that further discoveries will confirm his main contentions. It can only be a hypothesis, he admits, in view of the fact that" Sumerisches Recht ist heute ein Begriff ohne rechten Inhalt". From an examination of the "Dit-il-la" tablets of Telloh & the inscription of Gudea he comes to the conclusion that while 'nig-mussa' = 'tirḫâtu' in syllabaries, it has really changed its meaning & has ceased to mean 'bride-price'. Thureau-Dangin supports this in regard to the Inscription of Gudea: 'nigmussa= tirḫâtu, wörtlich' Frauenpreis'; hier scheint das Wort eine allgemeinere Bedeuting zu haben" (Koschaker p.161)

Inv. Tabl. Telloh II 960 " Erledigte Rechtssache. Gim-kal, die Ehefrau des Iskurandul hat gegen Lu-Ningirsu, Sohn des Ur-Ningišzida, den Mundschenk wegen seiner Schwiegersohnschaft eine Klage eingebracht. U. hatte bei seinen Lebzeiten an Lu-Gudea , Sohn des Ursagga das Wort gerichtet: 'Beim König, Lu-Ningirsu, mein Sohn dein Schweigersohn sei er' hat er gesagt. (Dafür) sind Atu, die Ehefrau des Ur-Ningišzida, die am Orte, wo man beim König schwört, anwesend war, (und) Lugina, Sohn des (....Zeugen) (Iskur-andul hatte bei seinen Lebzeiten an Ur-Ningišzida) das Wort gerichtet: 'Beim König, Lu-Ning(irsu, dein Sohn) mein Schwiegersohn sei er nicht' hatte er gesagt. Dafür sind Sukuddu Sohn des Abbamu (und) Ur-bau Zeugen. Gim-Kal hat die Zeugen zurückgewiesen. Lu-Gudea hat einen Eid geleistet. Lu-Ningirsu, Sohn des Ur-Ningišzida hat Gim-nigin-gar, die Tochter des Lu-Gudea geheiratet."

From which the conclusion is drawn "So handelt es sich beim Sumerischen Verlöbnis um persönliche Haftung auf Grundlage des Eides" (Koschaker p.160)

(op. also Bab.III,114-XXI,quoted Meissner B.&A.,Vol.I,p. 401). The terminology is as in C.H.,'tu(g)= 'aḫâzu',with bride for object. There is here also a 'taking' on the part of the husband,and a 'giving' on the part of her father or parents. The Betrothal Contract is arranged by the fathers of the parties, though it seems probable that the man might act for himself in the Contract of Marriage. The bride, however, is represented as the object of the Contract & is represented by her father or guardian(Koschaker,op.cit.p.158). The old name'nig-mussa' remains but "bereits zur Zeit Gudea,lange vor Hammurapi, war die Brautpreis zu einer der Braut gemachten Eheschenkung geworden, auf die dann der alte Name fur Brautpreis uberging"(Koschaker,p.163) According to the same writer this explains the confusion in terminology of Codes & Contracts,whereby 'nudunnû' in the latter,'šeriqtu' in the former signifies 'dowry'. Hammurapi had to find place in his legislation for Sumerian practice & incorporate it in his Code. He could not use 'tirḫâtu'='nig-mussa, for the latter had lost its old significance: he employs,therefore, the old word for gift,nudunnû, (nadânu=give),which continues to be used in the Contracts of the father's gifts to his daughter. "Doch das bleibt Vermutung. Jedenfalls wird man Willkürlichkeiten im Sprachgebrauch dem Gesetzgeber eher zutrauen dürfen als den Urkundenschreibern"(ibidem,p.179)

The theory has been stated as briefly as possible,and while it may appear somewhat complicated it may be that further discoveries will confirm most points. The test of a hypothesis must be its ability to explain the facts, and,by such a criterion, this theory appears to be worthy of consideration until it is displaced by another that does fuller justice to the facts. The Sumerian civilisation seems,in many ways,to have been more advanced than the Semitic & we shall find reason to believe that the humaner elements entered into these other

Codes & civilisations, moving from the South to the North. There ar are elements in the Code which can be traced to the old Sumerian legislation, anda, as the laws concerning Marriage &the usages connected therewith are the last matter a wise legislator will interfere with, it seems very probable that both Sumerian & Semitic custom are represented in this regulation of the fundamental Institution of Marriage. It may well be that such enactments as C.H. 150,171,172, are the result of Sumerian influence. Whether Betrothal was in one form or the other -by biblu & tirḫâtu or by oath & bridegift- both forms were contractual forms, equally valid, & the subsequent marriage completely regular.

C.H. 139 may have been designed to regulate such casesas the writer indicated but the general tenor of the article would suggest that it has in view cases that are common: they are thus best explained by the hypothesis of Koschaker. In any case the purpose of the legislator is to safeguard the woman & ensure provision for her.

It should be noted that the Hittite Code also contemplates Marriage without 'kúšâta': this is regular in slave marriages & in the special case mentioned in C.Ht. 35.

c) Marriage without Dowry.

The Code contemplates 'dowry' as a usual accompaniment of Marriage. A dowry was generally given by a father to his daughter on her becoming a bride or a devotee (C.H. 180). A concubine (Šugetum) was also entitled to a dowry from her father & if this was not given in his lifetime it was a charge on his estate at death(C.H.183, 184). Similarly where the father has failed to make provision for his daughter during his lifetime, she is entitled to a son's portion at his death(C.H. 180). Votaries of Marduk had free disposal of their dowries : other votaries had not such power to dispone but their dowry reverted to their brothers at their decease. In both cases the amount of the dowry is 1/3 portion of a son(C.H. 181,182). In the case of the 'Šugetum' it is enacted that in the event of her father not having given her a dowry that "her brothers shall present her a dowry proportionate to the fortune of her father's house , and they shall give her a husband".

Dowries might be appointed, and were appointed, as indicated in the preceding section, but were not always fully paid.

d) Marriage of Priestesses.

In C.H. 137,144, 145, 146, there occurs the peculiar word Sal-Me', translated wife', instead of the usual 'aššatum'. The earlier translators failed to/

grasp the significance of this but Kohler, Peiser & Ungnad in Vol. II, of H.G. translate 'Sal-Me' & refer it to the priestesses of whom a great many were attached to the temples. Their position was generally one of influence & affluence & according to Contracts, deeds & documents, they took a very active part in the business & commerce of the land & in their hands were large incomes & resources that made them desirable parties in marriage.

A dowry was given them when they became votaries or devotees(178-9)- Sal-Me, Zêrmašîtu, Kadista- over which they had full control if their father granted it so: if not so granted she had liferent of it & it reverted to her brothers at her death. With this dowry she traded & such dowries were largely used in banking & commercial enterprises.

It is questionable if all these 'Sal-Me' could marry or whether some were vowed to virginity. The Sal-Me of Marduk could marry though they were not permitted to bear children. There is no example of a Sal-Me of Šamaš being married & it would appear that in this case we are dealing with something akin to Vestal virgins. But a Sal-Me of Marduk could & did marry although marriage in this case seems to have been surrounded with fewer safeguards than in the case of ordinary marriage, and regulated with different rules.

Whether they were beyond the age for childbearing on entering the temple or whether they were rendered artificially sterile(Landsberger ZA.30, p.70) or whether by reason of their vow they were barred ordinary sexual intercourse, (B.A. II,436) they brought with them a ' Šugetum' or concubine whose business was to bear the children to the wife's husband. She is called her 'sister'. Perhaps 'substitute wife' or 'secondary wife' would be a more appropriate term than 'concubine'. Of the man's wife the expression used in regard to children is 'šuršû'=presents, procures, while of the 'Šugetum' the term used is 'walâdu' = bear." Die Kinder ,die sie geboren haben und gebären werden

sind ihre (beider) Kinder(H.G.III,3). cp. further

H.G. III,10,(list of dowry including) 1 Weib Suratum,die Nebenfrau, ihre Schwester, alles dies hatte Sin-Erîbam, ihr Vater der Lamassatum der Marduk Priesterin(Sal-Me) und Zêrmašîtu seiner Tochter im Hause der A.bei ihrem Verlöbnis bestimmt"

The matter is regulated in the Code as follows.

C.H.144 "If a man take a Sal-Me & that Sal-Me give a maidservant to her husband & she bear children; if that man set his face to take a concubine (Šugetum) they shall not countenance him. He may not take a concubine(Šugetum)".

C.H.145 "If a man take a Sal-Me & she do not present him with children & he set his face to take a Šugetum that man may take a Šugetum & take her into his house. That Šugetum shall not rank with the wife."

C.H.146 "If a man take a Sal-Mē & she give him a maidservant & that maidservant bear children & afterwards would take rank with her mistress, because she has borne children, her mistress may not sell her for money but she may reduce her to bondage & count her among the maidservants".

The practice of the maidservant bearing for the mistress is familiar to us from the O.T.(Gen.XVI,1:XXI-9) & even In Babylon is not likely to have been restricted to this limited application. In the Contracts the Šugetum frequently appears & her duties & functions are defined.

H.G. III,2,."Auch wird Iltâni die Füsse der Tarâm-saggil waschen und ihren Stuhl zum Hause ihres Gottes tragen; ist T. ärgerlich,wird I. ärgerlich sein:ist sie vergnügt, wird sie vergnügt sein. Ihr Siegel wird sie nicht öffnen: 10 Ka Mehl wird sie ihr mahlen und backen"

To return to C.H.137 we read as follows "If a man set his face to put away a Šugetum who has borne him children(uldušum),or a Sal-Me who has presented him with children(ušaršušu),he shall return to that woman her dowry & shall give to her the income of field,garden, &goods,and she shall bring up her children:from the time that her children are grown up ,from whatever is given to her children,they shall give to her a portion corresponding to that of a son,and the man of her choice may marry her".

The following article 138 deals with the case of the regular wife (aššatum). Here there is a difference of treatment. The ground of divorce is here given-sterility-&wife receives šeriqtu &tirḫâtu. No grounds are given in 137 & the provision made is small:the wife gets nothing until the children are grown up.It is worthy of note that the children follow their mother in 137,from which we may infer that the relation between the father & such children was not so strong as in the case of ordinary marriage. The common affluence of such Sal-Me & the fact that they were not permitted to have children of their own may have combined to bring it aboutthat less provision was made for such offspring than in other cases. Koschaker founds an ingenious hypothesis on the apparent fact that in such marriages the tirḫâtu was returned to the man bound in the woman's girdle(R.84,H.G.III,9).THis created a mortgage on the mother's dowry &enables the Sal-Me'sfather to secure the right of inheritance in it to the children(Code Ham.163) This would lend meaning to R.84,"Nachdem ½Mine Silber,ihre Tirḫâtu,an ihren Gürtel(?)gebundenund alsdann dem Utul-Ištar,ihrem Schwieger - vater,Zurückgebracht worden ist,sind für alle Zeit ihre Kinder ihre Erben." The legal consequence is indicated as follows,"Die Rückstellung der Tirḫâtu schon bei der Traunng,also zu einer Zeit, wo noch keine Kinder vorhanden waren, hätte zunächst gemäss 163 die eventuelle (namlich beim Tode der Frau eintretende) Verpflichtung des Mannes zur Rückstellung der šeriqtu und damit-dies scheint der springendePunkt zu sein- die Verfügungsgewalt des Muntwaltes über die Mitgift begrundet".

'It is to be noted here, however, that the word Sal-Me does not occur im this particular section. That need not invalidate Koschaker'shypothesis but it gives it a general application which it may/

may quite well have had. But it would, on this theory, have particular attention in the case of the Sal-Me both on account of the large dowry generally involved & the precarious situation of the children that might be born of the union. The point seems clear that marriage with a Sal-Me was of a particular form. The Sal-Me is accompanied by a Nebenfrau or concubine or female slave who serves the purpose of childbearing. Such marriages do not seem to be so securely guarded from dissolution on the part of the husband,& the position of the children is less secure than in the case of normal types of marriage.

CONCLUSION.

Marriage consists of a twofold act, the giving of the bride by her parent or guardian,& the taking by her husband. Thereupon she enters his house & lives in the new relationship with its rank, rights, and duties as described. There is no regulation in this source for wife remaining in the house of her father, as in A.G., C.Ht., O.T., &Arabia.

Both husband & wife live in a relation of mutual obligation & duty: both possess rights, personal & proprietary. The form of marriage may be derived from forms usual in Law of Sale, But in the Contracts is clearly stated the purpose for which wife is 'given' & 'taken to wife'. She cannot in any way be regarded as an object of merchandise. In some respects, as indicated, she possesses larger rights than modern women possessed in the 18th century. The presence of dowries, too, on the scale shown by the Contracts dispose of the that marriage of daughters was a source of income to a father. The reverse rather, must have been the case. Cuq is not far from the truth when he writes of the tirhâtu in Hammurabi's time "c'est une liberalité plus ou moins/

moins spontanée, un don de fiancailles remis au père et mère de la femme". The form is old & it may have retained its old significance in many cases even in Hammurabi's time - indeed we find that significance in the late Babylonian period- but in the majority of the Contracts it seems little more than a form, albeit a necessary form. The Sumerian practice may have helped to evacuate the old form of much of its content & hasten a development which we shall observe to be general.

ASSYRIAN LAWBOOK.

Marriage in this source reveals certain features which are not present in the older Code. The Book is fragmentsary & the text is mutilated but it is clearly written with a purpose & displays a strong bias against women. There is much about womens'duties and little about womens' rights.

Various indications lead to the inference that here we are dealing with a civilisation more primitive than the Babylonian: there is a rigour & vigour in its penal enactments that remind us of usages of the O.T.,although often enough in the latter case ethical and religious considerations may palliate these usages.

The form of marriage contemplated is monogamy. That form takes two aspects in the Lawbook & these two aspects engage the attention of the lawgiver & receive separate treatment. As in C.H. there is no stated interval between Betrothal & Marriage. An indication is given in this source as to age: a man might be married if he were ten years of age(A.G.44).

Marriage Contracts of the period are lacking but that their regular use was customary is implied by A.G. 35," Si quelqu'un épouse une veuve,sans fixer ses obligations, si deux ans dans sa maison(de lui) elle demeure, cette femme ne s'en ira plus". Such a Contract was erected at Marriage:it fixed the 'obligations' of husband & wife; these as they are regulated in the Lawbook,the discussion will seek to illumine.

Although Marriage Contracts are not available from this period it has been sought in an Excursus of the later Babylonian Contracts to illustrate later usage(v.p. 57).A contract from the period of Sargon (8th. cent.B.C.) is here given.

"Siegel des Nabû-rîxtu-uṣur zu Händen des Ardi-Iŝtar aus der Ortschaft derWäscher, Siegel des Ṭebetai, seines Sohnes, Siegel des Silim-Adad, seines Sohnes, der Eigentümer ihrer(!) Tochter(d.h. Tochter resp. Schwester), die übergeben wird. Ninlil-xaṣina, die Tochter des Nabû-rîxtu-uṣur, hat die Nixtêŝarau für 16 Ŝekel Silber fur ihren Sohn Ṣixa zu seiner Ehe erworben und genommen. Sie ist das Weib des Ṣixa. Das Geld ist vollständig bezahlt. Wer es auch sei, der jemals in der Zukunft aufsteht, indem er sich ungesetzlich benimmt, entweder Nabû-rîxtu-uṣur oder seine Söhne oder seine Brüder und Söhne seiner Brüder oder sein Statthalter oder irgend einer seiner Angehörigen, der Prozess und Klage mit Nixtêŝarau, ihren Söhnen und Enkeln sucht, soll 10 Minen Silber geben. Wenn er auch in seinem Prozess klagt, wird er doch nichts bekommen." (Johns, Assyrian Deeds & Documents:307: quoted by Meissner, B.&A. Vol.I, p.18D).

In some respects this resembles the Purchase of a slave, but the woman appears to be free. It is clearly stated in the deed for what purpose she is taken: she is taken, "to wife". This was observed also in the Contracts of Hammurapi's time.

The older Code was known in Assyria as has been made clear by the discovery of fragments of an edition(KAVI,190-2):it may be presumed therefore that usage here will not greatly differ.

An examination of the terminology reveals what has been found in C.H. The woman is taken by the man-"šumma amilû almâttu etaḫâz, (A.G.35:here widow is object) The father "will give-iddanši-her"(34) Thus the wife is 'conveyed' or handed over-'sinništu tadnat' (46) She is given by her father and taken by her husband, and as a result of these two moments the conveyance is completed and the

The wife enters the house of her husband ,'sinništu ana bît mutiša tetarab',(A.G.30)or in the other aspect, more frequently mentioned in our source, the wife dwells in the house of her father,'sinništu ina bît abišâma uzbat' (A.G.34.)Acc. to 37 the husband seems to set his wife 'dans une maison isolé(?) but the two kinds of marriage or married life were these, a)wife in husband's house,b)wife in her father's house.

It may reward us most if,considering the fragmentary nature of our source, we lay hold on several points & treat them in detail. We shall consider,therefore,a)Marriage with the wife in her father's house,b)Marriage with wife in house of her husband(or her husband's father'shouse),c)Marriage of a widow,d)Marriage of a pledge,e) e)Marriage of an 'esirtu'(by Veiling).In this way we shall come to a complete view of our source.

a) Wife in Father's House(A.G.26,27,28,33,37,39)

A.G.26"Siune femme demeure(est mariée)dans la maison paternelle et si son mari meurt,si les frères du mari n'ont pas partagé et s'il n'y a pas de fils-rien du 'dumaki'que son mari avait mis sur elle ne disparaîtra. Les beaux frères n'ayant pas fait de partage le prendront. à la sentence des dieux ils deferont,preuveront,prendront;au dieu fleuve et au serment ils ne seront pas condamnés". The burden of the proof is laid on the brothers.

A.G. 28."Si une femme est mariée dans la maison de son père et si son mari y est entré-tout le 'nudunnû' que son mari lui a donné, lui-meme (peut)prendre;à ce qui est de la maison du père à elle il ne touchera pas.

A.G. 33."Si une femme...et si son 'nudunnû'a été donné...charges, peine; et faute de son mari elle porte(en commun avec lui).

In this aspect of married life it is reasonable to think that the position of the woman is freer & more independent than that of the woman who dwells in her husband's house. But in both cases the duty of fidelity is laid upon the wife on pain of death(cp.p.108) When a woman enters upon a marriage of this kind or rather is

married in this way she receives from her husband a 'nudunnû' which the husband takes back at her death or divorce. Scheil defines it as 'don révocable du mari à la femme'& it is noteworthy that the acceptance of this nudunnû burdens the wife who receives it with a mutual liability for her husband's debts. That is reasonable & in accord with C.H.: it prevents a man avoiding his creditors by a transference of his property. Further in this marriage we find mention of 'dumaki' which Scheil again defines in his index as "apport du mari entrant en ménage chez son beau-père". According to Scheil "dumaki" on the part of t the husband would correspond exactly to "širku" on the part of the wife who dwells in her husband's house. Provision is made for its disposal in various contingencies. In the event of the husband's decease the 'dumaki' falls to the children; in the event of no children being born it falls to the wife(27) but not if the brothers of her husband were living in indivision. In this case it falls back to the brothers (26). In the event of divorce the husband takes back the 'dumaki'(39).

In such a marriage again it is the duty of the husband, &no doubt this is a general enactment,to provide 'oil,wool,raiment, maintenance'. This requirement,which may be taken as a minimal demand, as in O.T.& C.H.,is mentioned in the long article 37 which deals with the case of the absent husband.(cp.p.100)

b)Wife in Husband's House.

This is a less frequent form in the present source. Where it occurs it is more or less on a par with the same in C.H. The rank of wife is that of "Bêlit bîti"(25),while the husband is"Bêl bîti" (A.G. 25), master of the house. When she enters the house of

her husband (or the house of his father) she receives from her ~~fa~~ father a 'širku' or 'dowry',"apport de la femme entrant en ménage chez le beau-père"(Scheil).

A.G.30" Si une femme entre (se marie)chez son mari,son 'širku'et tout ce que de chez son père elle a apporté,et aussi ce que son beau-père a son entrée lui a donné est garanti à ses fils; les beaux-frères n'y toucheront pas, et si le mari la renvoie,il(le)donnera à ses fils comme il voudra".

From which we infer that it was in the hands of the husband for usufruct but reserved for the children. The husband has the right of divorce without cost(38)as opposed to C.H. On the death of her husband her property rights are conserved(A.G.47). If her husband has left nothing to her she may continue to reside in the house & her children maintain her. It seems to be contemplated that step-children may decline such a duty of maintenance, in which case it falls on her own sons so to do,& it further seems possible from this article to infer that one of her step-sons could marry her. Further she is under the 'potestas maritalis' & must comport herself with wisdom & discretion,not gadding about & playing the fool.(A.G.29:cp.C.H.141,143,O.T.,Proverbs,XXXI,10ff.)

c)Marriage of a Widow.

A.G.35"Si quelqu'un épouse une veuve sans fixer ses obligations, si deux ans dans sa maison (de lui) elle demeure,cette femme ne s'en ira plus."

There seems to have been less ceremony & form about the marriage of a widow & in this case it would seem as if the woman acted for herself. Cohabitation for 2 years establishes the marriage as also in Roman Law in the case of persons of equal status(Theod.Cod.III,7,3

A.G.36"Si une femme veuve entre dans la maison de quelqu'un(se marie) tout ce qu'elle apporté à son mari; et si un homme entre chez une femme (l'épouse)tout ce qu'il apportera, tout est à la femme."

This is simple enough & saves trouble at death of either party. It seems the largest right of women mentioned in the Lawbook. Nothing is said as to divorce. Complications arise, however, when the widow is encumbered with a child or children. Unless her second husband adopts them they have no portion in her husband's house but only the inheritance of their own father. A.G.29.

d) Marriage of a Pledge.

This is dealt with in A.G. 40,45,49,. The 'patria potestas' allowed a father to dispose of his child in this way although such power is limited in G.H. 117 & O.T. Indeed the rights of such a pledge were strictly safeguarded (G.H. 115,116) & while the text & the language of 40 is obscure we may gather that the intention is to safeguard not only the creditor or creditors but also the person of th maiden pledged. We shall leave aside article 40 as it is uncertain in text & meaning & it contributes little or nothing to our immediate interest.

A,G. 45 " Si un Assyrien ou une Assyrienne qui comme gage au pair de leur prix chez quelqu'un demeure, et si (celui- ci) pour prendre le prix total, (le)rase, coupe, on lui brisera et fendra les oreilles."

A.G.49 "S'il est quelqu'un dont la fille de son débiteur, pour dette demeure dans sa maison, et qu'il demande au père de la fille pour la donner en mariage- si le père ne consentpas, il ne la donnera pas. Si le père de la fille est mort il demandra à l'un des frères de la fille et celui-là en refera à ses au autres freres. Si le frère dit, dans un mois je libérerai ma soeur: si dans un mois il ne l'a pas liberée, le créancier, s'il veut, l'affranchira et la donnera à un mari (remainder lacking)"

The pledge must be treated fairly & may not be sold as a chattel or piece of mechandise. But in certain circumstances she may be sold & the Lawbook elsewhere states the price for which she may be sold-

3 talents, 30 mines de plomb (A.G.25,line 58).

e) Marriage of an Esirtu.

Acc. to C.H. under certain conditions a man might have a Nebenfrau or 'Sugetum'. Some such usage must have prevailed in Assyria also, but as both sources contemplate monogamy as the type of marriage the position of the secondary wife is definitely regulated. In A.G. 41 we have something like a Police order in regard to women's dress. An 'esirtu' was not permitted to wear a veil save when she went out in company with the chief wife. We need not discuss these regulations but confine ourselves to the portion of the article which describes the procedure by which an 'esirtu' is raised to the position of wife by veiling her in presence of witnesses.

A.G. 42 " Si quelqu'un veut voiler (épouser) son esirtu, il fera siéger 5 ou 6 compagnons, et devant eux il la voilera, en disant, "c'est ma femme"- elle sera sa femme. L'esirtu qui devant les gens(témoins) n'a pas été voilée, à qui son mari n'a pas dit "celle-ci est ma femme"- elle ne sera pas épouse; elle restera une esirtu. Si l'homme meurt et si des fils de sa femme voilée n'existent pas les fils des esirtu seront leur fils, et ils prendront les parts(de l'héritage).

That is Marriage by declaration & it is accompanied by a specified form. It must be assumed that the man's wife was dead or divorced because the Book only recognises monogamy.

Conclusion & Summary.

The general features of C.H. meet us again in this source. The position of the woman does not appear so secure as in the earlier source. The wife does not hold her dowry as securely, & the scope of 'nundunnû' is more restricted, being apparently used only to impose a liability upon the wife in the house of her father.

Altogether the position of the wife is much behind that of her Babylonian sister :the course of justice in the time of Hammurapi would hardly have tolerated such an enactment as that of A.G. 56, which seems an intolerable hardship imposed on an innocent wife. Ideas of property seem here to ride roughshod over personal rights. We have here , however, a feature which was not present in C.H. though we meet with it in O.T.,C.Ht.,&Arabia,the wife in the house of her father. This indeed, is the prevalent form of the relationship which we find in the Lawbook. According to W.R.Smith(Kinship & Marriage) & Wellhausen this was a common type of marriage in those early civilisations. Whether it is a survival of the Matriarchate, as Smith suggests, is beyond the scope of this inquiry to decide. Plainly, however, a woman in such circumstances is more independent than a wife who has left the paternal roof & entered into her husband's house. The husband could not, even if he would, exercise over such a wife the full dominion possible to him in his own house, for the kinsfolk were ready to befriend & defend their kinswoman. The Lawbook seems to be particularly anxious to surmount this difficulty & that may account for the majority of the articles on marriage dealing with the case where the wife is in her father's house. The purpose is plainly to bring the wife under the full potestas of her husband &to make the patriarchal form prevail in circumstances that made such attainment difficult . This explains the use of 'nudunnû' in A.G.43: the receiving of it brings the wife under her husband's potestas.

The older form remains, remains in a modified form & we are conscious that it is an age of transition when the later or patriarchal form has not yet ousted the older matriarchal

usage. There is no reason to think that the patriarchal form was not the usual form here: it would require less regulation just because it was general usage. But this old form created difficulties & was against the spirit of the times, which had long passed the Matriarchate. These considerations may explain the polemical tone of many of the laws & the apparent bias against women-particularly married women.

That something closely akin to the idea of Marriage by Purchase was present in the old Assyrian practice is clear from the mention of "the price of the woman" in express figures (A.G.25) & from the case of the pledge(49). Nevertheless, in these cases the women are possessed of rights, which they may have lost through fault (25) or forfeited through economic stress (49).

Excursus

Later Babylonian Marriage.

"Sonst gibt in neubabylonischen Zeiten nur immer der Vater seiner Tochter eine Mitgift(nûdûnnû) mit: die \Morgengabe\ (tirḫâtu) ist ganz verschwunden".(Meissner, B. & A.I,p.170). Similarly in Kultur der Gegenwart TeilII, Abt. VII,p.65," Die tirḫâtu ist im spateren Rechte abgekommen".

We shall endeavour by the aid of some of the later Contracts to find what the practice was.

That the tirḫâtu in some ways seemed to be losing its original sense we saw reason to infer in our study of C.H. Bride price even in the Code appeared to hover between its older meaning & that of bridegift. We are not surprised therefore when later we find it used in the Inscription of Assurbanipal in yet another sense. "mârat-su u marâte aḫê-šu itti tirḫâti ma-'as-si am-ḫur-šu",'his daughters (i.e. of defeated king) & the daughters of his brothers with rich tirḫâtu I received': or again of the defeated king of Arados "mârat-su itti nu-dun-nie ma-'di ana Ninua u-bil",' his daughters with rich 'nûdûnnû' to Nineveh he brought' ('ana epiš Sal-tuklu-uṭti, to make them concubines). In these instances the terms seem to be used somewhat loosely but they clearly indicate that the terms had become more or less evacuated of their older content.

Again in the Middle Babylonian period we find yet another word used for dowry-'mulûgu', whose etymology is quite uncertain. It may be related, as already suggested, to the מלוג of the Talmud. It occurs in a document of the 10th cent. B.C. It concerns a piece of ground which is given as a dowry " ik-nu-uk-ma itti mu-lu- gi u nu-dun-ni-e a-na A. mârti-šu aššati-šu ša B. iddin"=...has sealed &

with the mulûgu & the nudunnû of A. his daughter ,wife of B. has given".The word recurs in the Amarna Letters to denote the dowry of Taduhepa(Knudzton 25) & again in BV26 of the time of Kambyses.

The fragment of later Babylonian Law published in 1889 by Peiser & attributed to the time of Assurbanipal we have already referred to in our discussion of C.H. According to Law 3 in this document some other arrangement seems to have taken the place of the earlier ceremony. "A man has given his daughter to a freeborn man & the father has fixed something in a deed & given to his son,and the firstnamed has fixed a marriage portion for his daughter & they have mutually executed deeds of settlement. They shall not alter their deeds. The father shall give in full the settlement(nuṣurru) which he had promised his son by deed, to the father-in-law, and deliver it."

There is no mention of tirḫâtu here & it is the father who makes the settlement upon his son. These settlements the fathers are not entitled to revoke. According to Kyr. 307 & Kyr. 312 a son might not marry without his father's consent.

Acc. to Law 11 in the event of wife dying childless her dowry returns to her father's house cp. C.H. 163: Law 12, as we have seen, corresponds to C.H. 171 but here the change in the language is to be noted.Nudunnû = dowry, šeriqtu = husband's gift.

From the Contracts we may get further indications of the practice.

Nbn. 243 " N. son of B., grandson of A., spoke thus to S.,son of M., "Give me thy daughter I. the maiden, to wife,for U., my son". S. listened to him & gave his maiden daughter I. to U. his son. He gave also 1 mina of silver,3 female slaves (named) & house furniture with I. his daughter as a marriage portion to N.(1 mane kaspe ...nudunnu-u sa I. ana N. iddin). N. the maid of S. in lieu of 2/3 mina of silver her full price, S. gave to N. out of the mina of silver for her nudunnû. The deficiency, 1/3 mina will S. give to

N. & then her marriage portion is paid. Each took a writing." The nudunnû was not always fully paid up & suits follow to enforce & recover payment. (Nbk.91,161). No mention is made here of tirḫâtû & from its repeated occurrence we may infer the opening words of the document to be the usual formula in such Contracts. cp. Nergil.1, Strassmaier Liverpool 8, Kyr. 183 et passim.

There is,however, one document-it is the only one- that seems to suggest something more in accord with the older practice.

Nbk.101 "D...sprach zur Zamma,der Tochter des N. folgendermassen: Gib mir deine Tochter L: sie soll meine Frau sein. X. hörte ihn und gab ihre Tochter zur Ehe. Darauf gab D. aus freien Stücken den Sklaven A. den er fur ½ Mine gekauft hatte,nebst 1½ Minen Silber in bar der X. fur ihre Tochter L.Wenn D. eine andere Frau nehmen sollte,muss er der L. 1 Mine Silber geben & sie geht dann an ihren früheren Ort."

The presence of this Contract creates a difficulty of interpretation. It stands alone & the circumstances of the parties, which may only be conjectured,might explain the peculiar content. Perhaps this is a female slave,the sole support of her adopted mother. In taking her away provision is made for her by supplying another slave & a money compensation.(cp. Johns,ACL,p. 126). It is quite possible that this may be what it appears to be -a case of purchase. The old usage may have given place generally to the new but such survivals meet us elsewhere(cp. "Marriage by Capture"). Moreover the fact that the woman was a freed slave might account for the form. It is not the form in general use which is represented by the other Contracts.

Strassmaier Liverpool 8 "N. ...sprach zu D. ....Gieb B. , deine jungfrauliche Tochter,sie sei meine Frau.D. hörte ihn und gab ihm seine jungfrauliche Tochter B. zur Ehe.Wenn N. die B. verlässt, soll er 6 Minen geben,und wohin sie will, kann sie gehen: wenn B. mit einem anderem Manne gefunden wird, soll sie mit eisernem Dolche getötet werden."

The sum for divorce is high: likewise in Kyr.183: while no mention is made of tirḫâtû there is no mention here of nudunnû. The form of

punishment in the casec of adultery is different from that in the Code(C.H.129).

Ner. 25 "M.....hat im wohlgefallen seines Herzens 5 Minen Silber, 3 Sklaven,30 Stücke Kleinveh,2 Rinder und Hausgerät mit seiner Tochter H. zur 'nudunnû' an N. gegeben. N. hat seine(ihre?) 'nudunnû' von M. empfangen."

The dowry is in the hands of the husband & the usufruct of it is his as in C.H. It is usually given by the father as here: by both parents (Ner.7) by mother(Nbk. 198,283): by brothers (Nbn. 258). How a lawsuit might arise through failure to pay the 'nudunnû' at marriage is apparent from a document such as this:

Nbk.91 " 4 Minen Silber, Rest der 'nudunnû', Forderung der Hamma, Tochter des Apla.... .an ihren Vater Apla....Alle seine Habe in Stadt und Land soviel es ist, ist Pfand der Hamma. Ein anderer Gläubiger hat kein Besitzrecht darauf bis Hamma das Silber im Betrag von 4 Minen, den Rest ihrer 'nudunnû' erhalten hat." (cp. Nbk.161)

So much is clear from the Contracts regarding later Babylonian practice. It is in accord with the Code. There is a change of emphasis: the Tirḫâtu is seldom mentioned & the dowry has a larger place. Mutual settlements by the fathers appear in the Marriage Contract. The man may act for himself but may not marry without his father's consent(Kyr. 312): the woman is still 'given' & is represented in the Contracts by her father. Nudunnû in the sense of dowry is present: it seems an essential in marriage: by it,as inthe Code, the wife is provided for:it remains her property The later practice appears to have made more ample provision for the wife.

Hittite Code.

This source, as already indicated, does not give many regulations in regard to Marriage, but from what it does give we see that here also Marriage is regarded as the foundation of the family & the father is the head of the household. Babylonian civilisation had spread long before this date to the countries represented by this source & we may assume that the customs & usages present here do not vary in much from those we have already examined. The Hittites were a commercial people, as may be gathered by a glance at the contents of the Code, engaged in buying & selling: indeed a great part of this Code seems to be little more than a price list.

The form of marriage is monogamy, as in C.H.& A.G.,& contrary to O.T. Digamy might arise in exceptional circumstances through the actio of the Levirate Law but the Code contemplates in theory at least that a man shall be the husband of one wife.

The parties to the marriage contract are not defined as clearly as might be desired. It is not possible to use arguments from etymologyin this case owing to our ignorance of the Hittite speech. Nevertheless it is clear that the husband 'takes' his wife(art.27,30, 31,32,33,34), whether he is slave or free, and the woman is not represented in this source as other than 'being taken' or espoused. The parents appear to have power to 'give' or withold their daughter (art.28B:29) : 28A might appear to suggest a doubt as to the complete 'potestas' of the parents but the text is too uncertain to found such an inference upon it. It may be assumed that here, as elsewhere, she was 'given' in marriage by her father(or parents) and taken by the husband - the actual 'deductio puellae in mariti domum' is suggested in the beginning of 27, & that in the contract the purpose, to wife, was

There is nothing here to warrant the inference that she acted for herself in the contract: it is a contract between the man &herparents. No contracts are available for this source.

In view of the scanty material at our disposal it may be simpler to gather these regulations together & ascertain what kind of unions they are designed to regulate. In this way it is seen that marriage could be between a) free persons, b) slaves, ¢) slave&free (mixed)

a) Marriage of Free Persons.

This form seems to correspond to the regular scheme of things &is preceded by kúšáta betrothal & is based on marriage contract. Hereupon enters again a distinction which was found in A.G., but not in CH.: the wife may have her domicile in her husband's house or in her father's house. This, further, as in A.G., appears to correspond to marriage in the Roman Law, "cum" or "sine manu". Whether in such cases the property questions were settled as in Assyria we have no means of deciding. In one law, however, which is the only one referring to wife in the fathers house, we see the question of domicile did affect property.

C.Ht. 27 "Si un homme sa femme prend et dans sa maison l'amène de même sa dot dedans il met. Si la femme meurt alors ils de l'homme son bien rendent, de même sa dot l'homme prend. Mais si elle dans la maison de son père meurt, de même pour ses enfants sa dot l'homme ne prend pas."

Here in the first clause is a suggestion of the customary "deductio puellae". The meaning of the law appears to be that if the wife dies in her husband's house her parents ought to restore what the man has given, her husband keeps her dowry but it is reserved for her children. The Code contains no regulation for the case where the marriage is without issue (CH.163) On the other hand if she dies in her father's house, where she was living after her marriage, the man cannot lay claim to her dowry: it remains in her father's house & is reserved for her children.

Documents of the period, rare though they be, indicate that the type of marriage was that in which wife entered into the house of her husband (Bogh. Stud. 1X, 129) & while monogamy seems to be the general practice there is reason to believe that something akin to the 'Sugetum' of C.H. & 'esirtu' was known among the Hittites.

In Bogh. Stud. VIII, 19, where Shuppiluliuma gives his daughter in marriage he expressly stipulates that she is to be the chief wife of the king of the Mitanni, above every other woman of the royal establishment. The Hittite Code would certainly admit such a practice but no regulations are given concerning it.

b) Marriage of Slaves.

Acc. to C.Ht. 33 in marriage of this kind no 'kûšâta' seems to have been necessary nor in the case of a freeman marrying a slave woman(31)

C.Ht. 31 " Si un homme libre et une esclave sont épris(l'un de l'autre et ils viennent ensemble et il prend pour sa femme et une maison et des enfants ils font, ensuite ils ou font du mal (l'un à l'autre) ou ils se brouillent et la maison ils partagent ensemble, alors les enfants l'homme prend, l enfant la femme prend."

C.Ht.33 "Et si un esclave une esclave prend leur droit est de la même manière."

These two are cited together for the first illumines the second. It is possible to argue that in the first case although there is no 'kûšâta' mentioned the conferring of freedom upon the woman by her marriage is equivalent to 'kûšâta'. If mutual rights as these mentioned adhered to such a marriage it is beyond a peradventure that they adhered to a marriage where both parties were free.

c) Mixed Marriage.

Between freeman & slave woman as above(31), or between slave man & free woman(34) such marriage took place. There is a noteworthy sequel to the latter case which follows as a corollary to what we found in 31. In the event of a freewoman receiving a 'kûšâta' from a slave & being married to him, she assumes his social status & becomes a slave. This is directly opposed to Talmudic principle that "the wife rises with her husband but does not sink with him": the Rabbins would have frowned

on such a marriage & perhaps our present source has the same intention. The principle is clear that here the wife takes her husband's status & he acquires dominion over her.

In contrast to this in 35 we have a law that is not quite clear.

C.Ht.35/" Si une femme libre un homme mêleur d'onguents ou un homme pasteur épouse lex prix d'achat (de la femme) il ne lui donne pas et elle pour 3 années devient esclave." Acc. to 175 the period is 2 or 4 years & " aussi ses enfants on ceint et les ceintures personne ne prend".

E. Ring suggests that this may be a case of some higher palace officials (Israel's Rechtsleben p.128), but that seems little likely. These were occupations of a low order & held in low esteem. We know from O.T. that the Egyptians had little regard for shepherds & pastoral folk (Gen. XLVI,34): a worker in tallow formerly held a very inferior status in this land. These specified occupations were somewhat contemptible-for what reason we may not say- as is obvious from the penalty laid upon the woman entering into such a union. The principle is still clear that the husband has dominion over the wife. She is indeed taken to wife although in the contract of marriage she is enslaved for a period of 3 years. (cp. CH. 117:Exodus XXI,2,7)

C. Ht. 36 may be classed in this category of mixed marriage. This Zimmern takes as referring to Paederastic Marriage but it seems preferable to take it in Hrozny's interpretation. The law reads thus;

" Si un esclave à un fils libre le prix d'achat (le cadeau conjugal) donne, et comme l'homme époux le prend alors aucun ne le fait sortir

Cuq regards this as the complement of 34. Hrozny holds that"de la fille" is to be supplied after "époux". The slave is getting a son-in-law. In this marriage the latter loses his freedom & takes the status of slave.

Rights and Duties.

These can only be indicated generally. The Code gives few particulars The right of divorce was certainly in the hands of the husband. This is not expressly stated in our source but the custom was deeprooted in all these countries.(cp. Bogh. Stud. Viii,33,53)

What rights the woman possessed is not stated beyond what we have seen in art.31. The 'kûšâta' may have been her only protection, although one is inclined to think the general practice did not vary greatly from the regulations of C.H. C.Ht. 31 seems to assign fairly large rights to the woman, and if such was the case in mixed marriage it would certainly not be less so in the case of unmixed free unions. In 171 a woman casts out her son & seems, in so doing, to exercise 'patria potestas': it may be that here we are dealing with a widow or a divorced woman or one whose husband is absent on service. According to ~~177~~ 192, on her husband's death, she had part in the inheritance although, owing to mutilation of the text, we cannot be clear as to what part she had. The right of levirate remains to the widow although it is questionable if it was a compulsory obligation upon the man (cp. "Levirate"). No provision is mentioned for the case of illness, as in C.H. 148.

Conclusion.

It appears as if here we are dealing with marriage of the same type as we found in C.H. & A.G.The countries united by the Hittite conquest may have varied in their culture & development, as they varied in economic circumstance. Industry & agriculture flourished in different parts of the kingdom, & each component part of the kingdom may have

stood at a different stage of development. The subject peoples may have been more developed than their conquerors &their laws may have closely resembled those of Babylon & Assyria. "La plupart des anciens Codes contiennent ordinairement quelques règles sur la famille, la propriété,l'heredité, les contrats. Leurs rédacteurs ont jugé utile de consigner par écrit certains usages dont l'observation avait, à leurs yeux, une importance particulière. Iln'en est pas dans les lois Hittites: elles ne prétendent pas unifier des coutumes assez disparates: elles les laissent subsister par cela meme qu'elles s'abstiennent d'en parler. Elles ne mentionnent que celles qu'elles entendent modifier. Elles se distinguent à cet égard du Code Babylonien dans lequel Hammurapi a fusionné les coutumes de Sumer et d'ACCAD"(Cuq,Les Lois Hittites,p.18.

There is much lacking in this sourcethat is present in the other Codes. It is not possible to use arguments from terminology in this case but it is clearthat Marriage in this Code was by regular contract of conveyance & in each form of marriage a uniform status has been created in which the wife is found under the dominion of the husband. The wife is possessed of rights but that she acted for herself inthe erection of the Marriage Contract is scarcely probable. She is given &she is taken. The bridegroom and the father or parents of the bride are the parties to the contract.

There are various forms represented, as indicated in the foregoing, but the prevailing form here, as in C.H. is by Betrothal (Arrhalverlöbniss) & Marriage Contract.

Old Testament.

The form will be first considered & this will be found to be Polygamy. The extent to which this prevailed & modifications of the practice will also be indicated.

The question of age & capacity may also be considered as the later legisation gives direction on this matter.

An examination of the terminology will reveal usage similar to that observed in our other sources.

Attention may be given to the frequency of marriages within the circle of kindred.

Marriage Contracts of the early period are lacking but an example of the Jewish Kethūbāh has been adduced.

The ~~status~~ rank, duties, & rights of a) husband, b) wife, are considered: attention has been given particularly to the wife's property rights as shown in the later legislation.

Divergent types are also considered & the Conclusion follows.

Here we are concerned with a source that is neither a legal code nor a legal treatise although it contains elements corresponding to both. It is primarily a historical record, and, as such, is of varying value. In a review of our source, with the aid of the Assouan Papyri & the Talmud, we shall mark developments.

I.Kings, XI, 3, "And he had 700 wives, princesses, and 300 concubines." Polygamy -more correctly polygyny- is the practice of the O.T. although instances of monogamy are not lacking, e.g. Noah, Isaac, Isaiah, Hosea, The story of the Shunamite (II Kings, 4) as also the description of the virtuous wife (Prov. XXXI, 10ff.) read like a rebuke of the prevalent practice (cp. Prov. XII, 4: XVIII, 22: XIX, 14). THE frequent thought of Jehovah & his election of Israel to be his people (Jer. II, 1: Ezek. XVI, 8: Isaiah LIV, 1: L, 1) implies the same. In the earlier time it would

appear as if a man might have as many wives as his means would allow. Sheiks & kings had a great number(Judges,VIII,30: II Sam.V,13) But the Deuteronomist feels the danger of the practice & seeks to restain it(Deut. XVII,17). The Talmud allows 4 wives for a Jew(M. Yeb. IV,11:M.Keth.X,5: Ḳᵉrîtôṯ,III,7,allows 5) and 18 at most for the king (M.Sanhed. II,4). The whole tendency of the later legislation was to make it more & more difficult for a man to be other than a monogamist (Yebom 65a). In the 11th century A.D. the practice was declared illegal.

I Sam. I,2," And he had two wives;the name of the one was Hannah,& the name of the other Peninnah: and P. had children but H. had no children".

This may represent the common custom & probably where a man had two wives it may have been as here-one was childless(cp. Deut.XXI,15: II Chron. XXIV,3). Leviticus XVIII,18, prohibits such marriage with two sisters although the restriction applies only to their lifetime.

As to age & capacity no regulation is given in the O.T. According to the Talmud eighteen years of age was usual(Ab.V,24) & this by Rabbinic refinements came to signify 18th year,so that a man might marry after he had become 17 years of age. Anyone remaining unmarried after his 20th year is said to be cursed by God(Kidd. 29b). The legal age was puberty, which was generally 13 in case of males & 12 in case of females. Parents were strictly forbidden to give their children in marriage before the age of puberty(Sanh.76b)."Wer zwanzig Jahre alt und nicht verheiratet ist,lebe in Sünde(T.Kidd. 29b): intensive study of the Torah might excuse a man marrying but otherwise he might be constrained by the court. If a father betrothed his minor daughter (נערה) she could only be married with her own consent & had the right of refusal(T. Kidd. 41).

An examination of the terminology used may serve to illumine the usage of the O.T. & the probable content of the early Marriage Contract. Again we find the same general features as in the other Codes & Contracts. The man takes (לקח) the wife:(Gen. XXIV-67): in late Hebrew (IIChron.XIII-21), נשא is used of this taking whence comes the usual word for marriage 'Nissúín'(נשואין) חתן the root in C.H. & A.G. is not employed in that sense here. Again there is the more colourless היתה לאיש, to be to a man, be married (Hosea III,3): or again היתה לאישה, to be for wife to...(Numbers,XXXVI,3,6,11). הניח, make to dwell, occurs in this connection in Ezra X,2,10: from another point of view חתן התחתן, to make oneself daughter's husband, is used in ISam.XVIII,22. Most frequent,however, is the word בעל(Deut. XXII,22),to become or be lord or owner of, from which the prevailing type of marriage is generally known as "Baal Marriage".

Corresponding to this taking is a giving (נתן) on the part of the bride'sfather or her brothers,or ward. (Ex.II,21: I Sam. XVIII,21: Gen.XXIX,26). As a result of these two moments the bride entess into the house or tent of her husband (or his father) & was made to dwell there.

There is one characteristic here which we do not find predicated in any of our other sources, but which was frequent in Hebrew marriages, as in Arabia to this day. That feature is marriage within the circle of relatives & particularly marriage of cousins. Marriage between cousins was not favoured by the Koraites nor by Hindus,who hold that'a cousin is almost like a sister',nor by the early Romans. But such marriages are frequent among the Arabs,

/and/

and according to Jaussen, a man has first claim upon his cousin. "It is probable that Jews more frequently than others marry their cousins. Jacobs has shown this for England where marriages of cousins occur to the extent of 7.3% of all marriages as against 2% for the general population. In Lorraine the proportion is 23.02 per 1000 for Jews as against 1.86 among Protestants & 9.97 among Catholics" (Jewish Encyclo. Vol. VIII, 339).

In the older record marriage was effected within a degree of affinity not allowed later (v. 'Prohibited Degrees', p. 95) Abraham married his half-sister, Sarah: Amnon might have married Tamar (IISam. 13) but the Deuteronomist would have banned such a union. Issac married Rebekah, his father's brother's son's daughter. Esau married his father's half-brother' daughter (Gen. XXXVI, 3.) Jacob married Leah & Rachel, daughters of his mother' sbrother. It may be, as Rivers suggests, that in such marriages the Hebrews were following Egyptian custom (Social Organisation, p. 217). Marriage was largely within a restricted area of kinship & Esau caused grief by going outside that area (Gen. XXVI, 34).

Nevertheless there are not a few cases in the early record where the practice of Esau is reported, (Ruth I, 4: Exodus II, 21 Gen. XLI, 45). Shechem's plea for intermarriage is repelled (Gen. XXXIV, 9); later Ezra & Nehemiah are pressed with the same plea but seek to withstand it & preserve purity of blood & race (Ezra IX, 10: Nehem. XIII)

It may be simpler, in an effort to reach a conclusion, if the various enactments & provisions are considered from the side of (a) the husband, (b) the wife.

a) Husband.

The rank of the husband is best signified by the word בעל, (Exodus XXI,3,22: Deut.XXIV,4: II Sam. XI,26: Hosea II,18-A.V. II,16-Joel I,8: Prov. XII,4: XXXI,11). The type of marriage in Genesis is Baal Marriage, in which the wife is subject to her husband & classed with her husband's property(Exodus XX,17: cp. Gen. XX,3: Deut. XXII,22) It is characteristic of Deuteronomy that she is set first in the list of his possessions(Deut. V,21) as opposed to the earlier document which sets her after his house(Exodus XX,17). In Gen. XVIII,12 Sarah calls Abram 'my lord'(אדני): in Isaiah we have the corresponding Beulah(בעולה) of the woman(Is. LIV,1: LXII,4). This is the predominating conception of the matter though the records justify us in assuming that the 'dominion' could often take the form of a gracious & tender companionship, e.g. Jacob & Rachel: Isaac & Rebekah.

It could also be harsh enough, as we shall see in our examination of Divorce(p. 102)

The husband's rights were large & ample. He might have intercourse with such women as he desired in addition to his wife but adultery was a crime(p. 111.). Profligacy is strongly deprecated(Judges XIX,XX: II Sam XI,XII: Prov. V,15ff.:VI,20ff.:VII,6ff. Eccl.XII,1)

He had the right to demand the tokens of his wife's virginity(Deut. XXII,13) and the right to expect children from the marriage. According to the Talmud childlessness was sufficient ground for divorce(M. Gittin IV,8).

He could sell his wife for service but the period of such service was limited to six years(Ex.XXI,2: Deut.XV,12:cp. C.H. 117).

The rights of the husband are larger than those contemplated in C.H.

and the legislator of Babylon who assuredly would not have tolerated such an injustice as A.G. 56 would have frowned severely on the conduct of Abraham(Gen.XX,2). It is indeed possible that this conduct may have been with the consent of Sarah(Gen. XX,13).

The Talmud is more detailed as to husband's rights. The earlier record had no need for such detail where the husband's rights seem practically unlimited. According to the later legislation " whatever a woman finds & likewise the produce of her labour belongs to her husband"(M. Keth. VI,1). Proverbs XXXI also suggests this. "Of what she inherits he enjoys the usufruct during life"(ibidem): he has the usufruct of her dowry & all'paraphernal' property & he is her sole heir at death. The first of these enactments represents a 'quid pro quo': Jewish Law reasoned that if a man maintained his wife he is entitled to her gains. But the wife could contract out of this matter & support herself,in which case her earnings were her own. The man, however, could not compel such'contracting out'.

The duties of the husband,as in A.G., are not given at length. In Exodus XXI,10, we find a minimal demand laid upon the man to provide 'her food,and raiment and duty of marriage'. Forasmuch as a minimum frequently tends to become a maximum the Talmud again details the matter more particularly. It is the duty of the husband (Ket. 46b)

1) to deliver a kethūbāh to his wife.
2) to provide medical care & attention in case of illness.
3) to ransom her from captivity.
4) to provide suitable interment.

"The poorest man must provide his wife with bread for at least two meals a day,with sufficient oil for heating & lighting purposes, & wood for cooking,with fruit,vegetables,& wine where it is customary for women to drink it"(T.Keth. 65a). She must also receive a silver ma'ah each week for pocket money(ibidem). As an extension of the aforementioned minimum,the later Law did not allow the husband to reduce the level of comfort the wife had enjoyed under her father's

roof, while it is enacted that she is entitled to any additional advantages his house may possess(T. Keth. 61). If he is unable to provide his wife with a suitable outfit-'alles seinem Stande entsprechend'- he must divorce her(T. Keth. 64b). According to the Shulchan Aruch a man,in case of necessity, is bound to hire himself as a day labourer to gain the means of discharging his conjugal duty(Eben HaEzer LXX,3). In case of desertion by her husband the court is entitled to distrain upon his goods to provide alimony for her(ibidem,LXX,5)

The husband is not liable for his wife's pre-nuptial debts,nor for any debts incurred without his authority(Eben Ha'Ezer XCI,4). The duty of ransoming her might entail a sacrifice greater than the value of her dowry(ibidem, LXXVIII,3). Regarding interment R. Juda sagt" Selbst der ärmste in Yisrael nehme wenigstens zwei Flötenbläser und ein Klagweib"(T. Keth 46b).

b) Wife.

As indicated in the foregoing her ~~status~~ rank in early time was not high. She was regarded as the possession of her husband(Ex.XX,17). She is 'the owned' (בעולה). Frequently the wife appears as the friend and counsellor of her husband & the wise superintendent of her family. By force of character many a בעולה came to occupy a position of eminence & not a few are remembered & revered as true types of 'mother in Israel'

Her duty was submission to her lord(Gen.III,16). Even in the later Christian era Paul does not find it difficult to exhort wives to such submission(Eph. V,22).

Absolute fidelity was required upon pain of death(Deut.XXII,20: Ezek. XVI,38).

Her duties in early times must have been onerous, comprising both outdoor & indoor work,although the maid or maids which she brought

with her , might partly relieve her of the most burdensome tasks (I Sam.II,18: Ruth II,2:Prov. XXXI,10ff.)

"These are the kinds of work which the woman is bound to do for her husband. She must grind corn,&bake,&wash & cook & suckle her child, make his bed,& work in wool. If she brought him one bondswoman(or the value of one for her dowry) she needs not to grind,bake or wash: if she brought him two(or the value of two for her dowry) she need not cook or suckle her child; if three she need not make his bed or work in wool: if four, she may sit in her easy chair. R. Eleazar saith ' Even though she has brought him 100 bondwomen he can compel her to work in wool,as idleness leads to unchastity"(M.Keth. V,5: T. Keth. 69b).

Proverbs XXXI,10ff. contemplates the wife occupying herself not only with the usual household tasks but also with 'merchandise, vineyards,& fields'. According to the Talmud rearing animals or playing games is not regarded as an occupation(T.Keth. 52b: 61b).

If the wife bears twins she requires only to suckle one child; the husband must provide a nurse for the other(T.Keth. 59b)

Her rights in the early period appear almost negligible. The minimum is set forth in Ex. XXI,10 which we have already considered in respect of the husband's duty. She appears also to have had the right of presenting her maid to her husband to bear children for her in the event of her own sterility(Gen. XVI,2),or even when that reason was not present. She could not,like her sister in Babylon, prevent her husband taking another wife or concubine,but she had the right to dispose of her handmaid in the event of the latter becoming presumptuous(Gen.XXI, 10).

In the case of her husband dying without issue she had the right of Levirate Marriage(q.v. p.113).

She appears to have possessed a certain 'potestas' under the dominion of her husband(ISam. XXV,18: IISam. IV,22).

She was entitled to protection against slander(Deut. XXII,13)

In Divorce she had the right of remarriage (v.p.104).

In the house it would appear as if she was entitled to the innermost apartment(Judges,XV,1;XVI,9:Ps. CXXVIII,3). I Kings XVII,8, may not represent a general practice but a special case.

According to later Jewish Law the wife did not succeed to her husband's estate but received her dowry & kethūbāh. If she left her dowry lying & remained unmarried, she had the right of liferent in her deceased husband's house & of maintenance by his legal heirs.

These matters are not so regulated in the earlier period but the Assouan Papyri reveal something similar as we have already observed. v.p. 17). Syene,the modern Assouan, was exposed to various foreign influences & may not mirror purely Jewish practice. The Mōhar is there but it seems a formal thing(cp. 1 Šekel in H.G. III,11) and emphasis should rather be placed upon the status of the wife & the rights wherewith she is invested. The picture,indeed, is not all of a piece & in the wife's legal position there are discrepant elements. The judgement of Tūrck may perhaps be accepted here,although the modifying clause of that judgement must receive due emphasis." Ihr Inhalt zeigt dass an sich -zum mindesten in Princip- um Kaufehe handelt: es wird ein offenbar gesetzlich feststehendes Kaufpreis für die Braut bezahlt ....trotz der Kaufehe steht sie als Ehefrau gleichberechtigt neben ihrem Manne"(Z.A.T.W. 1928,p.166-9).

The wife's property rights according to the Talmud may be here briefly referred to.

a) Kethūbāh.

The Kethūbāh is not a Mosaic institution but a later regulation designed to meet later conditions. In the Talmud it is a 'sine qua non' of Jewish marriage:there can be no legal marriage without it (Yeb.89a: Keth. 10a). Its purpose is to secure provision for the

wife in the event of divorce or the death of her husband, and secondarily to make divorce difficult & expensive.

The amount to be given by the husband is definitely fixed, being 200 zuz for a bride & 100 for a widow, although the priestly aristocracy doubled these sums in the case of their families. This sum is a first charge upon the man's estate & is stated in the document (כתובה).

b) Dowry.

For dowry Rebekah has her nurse & some damsels(Gen.XXIV,59,61: cp. Gen. XXXX,24,29: Ps. XLV,14,15). Solomon received the city of Gezer as a dowry with his Egyptian wife(מלכים א', ט' ,טז). Dowry appears also in Josh. XV,19: Judges I, 15 (ברכה). According to Numbers XXVII,1-11, XXXVI,6, the inheriting daughters,in the absence of brothers take their father's possessions into the marriage. cp. Tobit VIII, 20; X,10.

The dowry (נדוניא) is also regulated : a father must give at least 50 zuz, & more as his means allow(cp. M. Keth. VI,5). This προίξ or נדוניא which she brings the husband may increase by παράφερνα or תוספת כתובה, generally to the extent of 50% or even 100%.

c) Tsōn Barzel.

This (צון ברזל) refers to the wife's dotal property,'property of the iron sheep', so called because,like iron it could not be wasted or deteriorate, and like wool it yielded profit. It is the wife dotal property of which the husband has the usufruct only : it remains her inalienable possession. He must return it unimpaired on divorce or at his death, must make up any loss thereon, but is entitled to the value of any "improvements" he has made.

In contrast to the wife 'Tsôn Barzel' of the 'Nedûnje' , the παράφερναι (נדוניא), that is the extra property above the stipulated dowry or whatever else the wife may have acquired ,exclusive of the נדוניא is allowed to the husband for usufruct & he is not held responsible for any loss or deterioration in this case. It reverts to the wife also but, as subject to easier conditions of usufruct than the Tsôn Barzel it is called נכסי מלוג , 'property of simple usufruct'.

It is to be observed that 'mulûgu' meets us in the Assyrian documents as = dowry; núdúnnú we have already met & its kinship with 'Nedûnje' is obvious.

d) Private Property.

Into this class falls the 'donatio propter nuptias' of the husband & any other donations or gifts that may be given her expressly designe for her own use. This is her own to use & enjoy & her husband may not have the usufruct of it. She is not permitted, however, to part with the property which formed her husband's donation as he is entitled to inherit it on her death. (Eben-Ha-Ezer,LXXXV,7)

Such was the law until the 12th century A.D. when it was modified to the extent that if wife died childless in first year her dowry reverted to the house of her father or his legal heirs: if in the second year, half of her dowry & possibly also half of her paraphernal property is to be returned.

The Kethūbāh is the marriage document(Gr.γαμικός) in which all these matters are regulated & hereafter is quoted an example.

"On,..(day of the week), the...(day of the month),..in the year..

AM according to the Jewish reckoning,here,in the city of...Mr...., son of ..,said to the virgin...,daughter of ..;Be thou my wife in accordance with the laws of Moses & Israel,and I will work for thee, and I will hold thee in honour & will support & maintain thee. I will furthermore set aside the sum of 200 silver denarii to be thy dowry,according to the law, & besides provide for thy food,clothing, & necessaries,and cohabit with thee according to the universal custom.

Miss...,on her part, consented to become his wife. The marriage portion which she brought from her father's house,in silver,gold,& valuables,clothes,etc.,amounts to the value of .....Mr.- ,the bridegroom consented to increase this amount from his property,with the sum of....,making in all....He furthermore declared:I take upon myself & my heirs the responsibility for the amount due according to the Kethûbâh, and of the marriage portion,and of the additional sum (by which I promised to increase it), so that all this shall be paid from the best part of my property,real & personal,such as I possess or may hereafter acquire. All my property, even the mantle on my shoulders, shall be mortgaged for the security of the claims above stated,until paid,now and for ever.

Thus Mr...,the bridegroom,has taken upon himself the fullest responsibility for all the obligations of this Kethûbâh,as customary in regard to the daughters of Israel,and in accordance with the strict ordinances of our sages of blessed memory; so that this document is not to be regarded as an illusory document or as a mere form of documents.

In order to render the above declarations & assurances of the said bridegroom...to the said bride...,perfectly valid & binding we have applied the legal form of symbolical delivery"

(Signature of Groom)
(Signature of two Witnesses).

The document needs no comment in view of the foregoing analysis.

Divergent Types of Marriage.

While the 'Baal' type is usual in the O.T. other types occur as in O.H. & A.G.

a) Wife in Father's House.

This was seen to be the most frequent type referred to in A.G. In early Arabia it was common. The wife resides in her father's house or tent & receives the visits of her husband there. According to W. R. Smith this is a survival of matriarchal usage(Kinship & Marriage,p.79) There are several instances of this type in the O.T.(Judges XIV: VIII, 31-case of concubine). Jacob's marriage with Rachel & Leah is hardly of this type for Jacob was residing with Laban & was a fugitive from

home. Gen. II,24, seems to contemplate marriage of this type: Moses' marriage(Ex. II,21f) is similar to that of Jacob. Marriages of this type are rare & exceptional in the O.T. & do not appear to have given as much trouble to the legislator as in Assyria.

b) Marriage of a War Captive.

Deut. XXI,13," When thou goest forth to war....& seest among the captives a beautiful woman & hast a desire unto her, that she should be thy wife: then thou shalt bring her home to thine house, and she shall shave her head & pare her nails & she shall put the raiment of her captivity from off her, and shall remain in thy house & bewail her father & mother a full month, and after that thou shalt go into her & be her husband & she shall be thy wife. And it shall be, if thou have no delight in her, then thou shalt let her go whither she will: but thou shalt not sell her for money, thou shalt not make merchandise of her, because thou hast humbled her".

That is the humane legislation & the evils he seeks to avert we may be certain were common enough in the earlier time. Assuredly 'it had not been so wrought in Israel heretofore' and the lot of the war captive must have been no better than that of a slave. There is no גרש here but a particular form for a special case. Apparently she could be repudiated without the formal"bill of divorcement".

c) Marriage by Capture.

It may well be that לקח, take, used of marriage is derived from the more primitive practice of taking by force. It is doubtful if the story in Judges XXI,20 is a real instance of 'Raubehe', akin to the rape of the Sabines. It would be precarious to draw any large inference fromthis tale, happening as it did in a time of moral & political anarchy. Read in connection with Ch.XIX,XX, it seems an exceptional action adopted to meet an exceptional situation. The Song of Songs may contain reminiscences in III,7, and VII,1 (A.V. VI,13).

Wives and Concubines in the Old Testament.

An effort has been made to show the relation between Sal-Me & Šugetum in C.H.(v.p. 43). It was suggested there that such a practice as that referred to was hardly likely to be restricted to the case of "Priestess Marriage". The Code, however, does not seem to contemplate a general practice of this custom, but it was common usage and is likely to have prevailed generally. Regarding the particular case of the Sal-Me & the Šugetum the words of Landsberger may be quoted "Natîtu und Šagîtu sind innerhalb des Eherechts korrelative Begriffe: ausserhalb sind es Standesbezeichnungen. Es war eine niedrigere Klasse von Priesterinnen...die Šagîtu ist die Dienerin der natîtu".(Z.A. Vol.XXX,p.68)

Of the Assyrian esirtu = "interned", it is not possible to speak with certainty. She seems to have occupied a position midway between that of wife & slave. The "esirtu" could be raised to the status of wife by the method described in A.G. 42. Her children could inherit conditionally on the absence of issue by the man's wife. It appears that a man might have more than one 'esirtu': presumably they were taken by the man himself & no mention is made of any restriction in the matter. Probably, as Cruvelhier suggests, the 'esirtu' was a captive of war (Revue Biblique, 1927,p.367). The data are insufficient to warrant a judgment.

In regard to the O.T. while there is frequent reference to the concubine(פִּילֶגֶשׁ) there is an ambiguity as to her exact status. The word אִשָּׁה is used as a general term for wife or concubine(Gen. XXX,4): again for wife as distinct from concubine(Judges VIII,30,31: I Kings XI,3). It seems difficult to draw an exact distinction

between אמה, שפחה, פילגש. "Il suffit de dire que la précision des termes n'a pas été observée" (Cruvelhier, op. cit. p. 369). In all probability the person of all the females in his house or tent would be at the master's disposal with exception of such as were within the Prohibited Degrees. The wife's maid who was given by her to the man in view of her own sterility (Gen. XXX, 3), or even in the absence of such reason (Gen. XXX, 9), remains under the authority of her mistress. (cp. C.H. 146, 147).

The name פילגש (Gr. παλλαξ) is of foreign origin & may be due to the Hittites. It may represent a slave purchased by the husband (Lev. XXV, 44) in contrast to the אמה given by the wife. Female captives of war, too, would afford a plentiful supply of concubines (Num. XXXI, 9-18: Deut. XX, 14): the captive of war would not in early times meet with the treatment directed by Deut. XXI, 10 ff. Laban's speech in Gen. XXXI, 26 suggests that such captives were not treated with excess of courtesy. No restriction is mentioned as to the man's right to take such a concubine: in Babylon he had the right only within limits (C.H. 144)

In the case of the Old Testament the rights of the concubine do not appear to have differed from those of the legitimate wife. C.H. 145 draws the distinction in rank. It was considered a deep dishonour to violate a concubine (Gen. XXXV, 22: XLIX, 4: Judges XIX: II Sam. III, 7: II Sam. XVI, 21).

The children of the concubine were not without rights of inheritance although the chief wife might secure the major portion for her children (Gen. XXI, 10: XXV, 6). The children of Jacob by his wives & concubines all rank as ancestors of tribes. In C.H. 170 children of the maidservant (amtu) inherit equally if duly adopted by the

father in his lifetime, but not otherwise(171).

In the case of the later Kings these concubines seem to have been taken in large numbers. David had 10 who appear as occupied w with the menial tasks of the house(II Sam. XV,16): Solomon had 300(I Kings,XI,30): Rehoboam had 60(II Chron. XI,21). This appears mere licentiousness & is a departure from the earlier usage.

In ordinary life the practice must have been restricted & may have been on the simple scale indicated in C.H. Force of circumstances would regulate the custom. צרה became a technical term for the second wife(Assyrian 'ṣirritu': Gr. αντιζηλος , Sirach XXVI,6; XXXVII,11). Where one was loved(אהובה) and the other hated(שנואה) (Deut. XXI,15: Gen. XXIX,31,32: Is.LX,15) domestic life could scarcely be enjoyable for the man. Rivalries between the wives communicated themselves to the children & laid a train of endless strife (Gen.XXIX,31ff. : Judges IX,1 : II Sam. XIII,1ff.).

The earlier custom will have been that by which the wife gave her maid to her husband. She had this right(C.H.144: Gen.XXX,3). Later when matriarchal power had become less the man asserted his right to choose his own concubine.

According to the Talmud(Ṣanh.21a) the difference between concubine and wife was that the latter received a Kethūbāh and her marriage was preceded by formal Betrothal(Ḳiddūsîn) while this was not so in the case of the concubine. In the early record the purpose for which the wife was taken is expressly stated. She was taken "to wife" (Gen. XXIV,67: XXV,20: Judges XIV,2).

Conclusion.

The Talmud is an enlargement & interpretation of the Mosaic laws. The enlargement consists in extended provisions made by analogy & deduction from the Biblical laws, partly in the embodiment of those forms & usages which had been handed down by tradition from time immemorial, and which have now become a part of the law: partly in new regulations enacted by the Sôpherîm & later religious & civil authorities according to the exigencies of the changed time and circumstances. In such terms Mielziner describes the Talmud.

With the help of the later law an effort has been made in the foregoing to survey Jewish practice over an extended period of time. Clear lines of development & change have been observed. The later Law sheds light on the earlier practice. In the Time of the Talmud there is the regular Marriage Contract, (Kethûbâh), and, as in C.H.128, there can be no Marriage without Contract. The Assouan Papyri have yielded similar Contracts, an example of which was quoted (v.p. 17). This may not reflect conditions of pure Judaism but it represents the practice of using such written instruments in the case of Marriage. The Deuteronomist knows the written "bill of divorcement" (Deut. XXIV,1), and it is probable that he has in view written Marriage Contracts, although none are available from the period. That marriage was the subject of Contract in the earlier period may be inferred from the fact that by Marriage was created the status which gave rise to definite rights on both sides. The content of this early Contract may have differed, & indeed did differ, from that of the later Contract, but under it the woman had rights, however slender these rights may appear, & by it her status was fixed. Her rights may well have been larger than those

set forth in Exodus XXI,10,which gives the minimum. It is a noteworthy fact that the most beautiful marriages in the record are precisely those recorded in the early parts of our source(e.g. Rachel, Rebekah), which were contracted under conditions that are frequently represented as pressing hardly upon women.

The developments have been marked & illustrated. It has been shown how 'bride-price' is transformed into 'bride-gift'(p. 19), how women ceased to be treated as chattels or property & became invested with rights. The contracting parties,as already noted,p. 70) are at first the respective fathers, later the bridegroom & the father(or parents) of the bride, & lastly in Judaism the bride & bridegroom.(v.p. 78)

Marriage Ceremonies.

Wedding Ceremony(Hochzeit)

That marriage was not without its romantic & picturesque side is clear from all our sources. Emphasis as we have observed was laid upon the sponsalia or Betrothal; in A.G. 43 it was remarked how the effecting of this was by quaint ceremonial. According to an ancient document,quoted by Meissner,(APR,p. 147,note 3) the giving of the tirḫâtu was something of an occasion. It appears that the man"laid his tirḫâtu on a plate & brought it to her parents". The Marriage-broker does not meet us in the old records but is familiar both in East & West in later times. There is no reason to think that mutual affection did not play a large part in forming marriage unions & loveletters are to hand from the early days of Babylon(VAB,VI, No.160).

Regarding the wedding ceremony it is not possible to give an exact account of custom as it then was: the material is too scanty. Dr. Pinches published in 1892-93,in the Proceedings of the Victoria Institute, a tablet which appears to be the description of a Sumerian wedding ceremony. It seems, however, so fanciful & poetic that Koschaker is probably right in dismissing it as of no historical value.

From.Kyr. 307 we learn that in Babylon there was a particular place where weddings took place. This place was known as the "wedding house", literally "house of the males" or"of the named ones". It was also called "mâr bânê","house of the sons of ancestors". It was plainly a court of registration. The registrar was a 'mar banê' son of an ancestor'. It was he who performed the marriage. His house was also known as "bît pirṣatum" of obscure meaning.(Johns, B.&A.Contracts &Letters p.128).

It may facilitate our study of this matter if we consider one or two points that have attracted attention and are worthy of notice. They will be reviewed briefly as they are features more or less common. They are a) the Wedding Guests, b) Wedding Procession (Zeffa) c) Wedding Tent (Chuppāh) d) Wedding Feast.

a) Wedding Guests.

In the first place it will reward us to consider under this heading, the main parties, Bride, Bridegroom, Bridegroom's Friend. There is little in our sources to give a complete view of these parties. Probably the custom of the O.T. represent what was general & in a gathering together of such references as are to be found there we may get a view of the general practice.

According to Krauss (J.A. Vol.II, p.37) elaborate preparations were made to set the bride in perfect order, much as in the case of modern Arabs (Lane, op.cit. p.170ff). The λουτρὸν νυμφικόν appears as an essential here as in Greece - the brides at Athens were bathed in water from the fountain of Callirhoe - and Plummer finds a parallel probable reference to this practice in Ruth III,3, Ezek. XXIII,40, Eph. V,26-7. The bride wore a veil, a sash (Jer. II,32), a crown. The wreath worn by the bride was apparently a late introduction: it appears in III Macc. IV,8: after Vespasian's invasion it was discontinued but was restored later & the wreath of myrtle is an established feature of bridal attire in Middle Ages (Abrahams, op. cit. p. 195). Jewels, too, she had (Is. LXI,10) and "all her garments smell of myrrh, & aloes & cassia" (Ps. XLV,8): 'her clothing is of wrought gold' (ibidem). It might not be true of all but where it could be afforded "she shall be brought to the king in raiment of needlework" (ibidem: cp. Is. XLIX,18).

"Queen" (Maliki) was her designation in Arabia & all strove to yield her homage in the ceremony(cp. Wetzstein on Syrian Threshing Sledge: H. D. B. Vol.III,p. 272). A garland does not appear to be part of her adornment at first but later she wears this also. Her veil she wears throughout the ceremony until the husband lifts it in the Chuppāh. Thus Jacob did not discover the fraud of Laban until that moment.

The bridegroom made himself ready for the ceremony with equal care. He wore a garland(Is. LXI,10:Song of Songs III,11) on the day of his wedding(יום חתנתו S.of SongsIII,11), nor did he disdain to wreathe himself in "pillars of smoke,perfumed with myrrh,frankincense, with all powders of the merchant"(S. of Songs III, 6).

Between betrothal & marriage he was exempt from military service (Deut.XX,7) & for a year after marriage(Deut.XXIV,5)

The "sons of the bridechamber" might include all the guests but the Bridegroom's friend or Groomsman(שושבין) was the most important of the company. It was his province to superintend & manage the Wedding & it was he who conducted the pair to the bridal tent or chamber(Chuppāh). It was an honour greatly coveted for did not Jehovah act as Shōsbin to Adam? The custom of having a Shōsbin appears to have been peculiar to Judea & does not appear to have been observed in Galilee. At Cana of Galilee it is the bridegroom himself who seems to be in charge of the arrangements(John II,9).

The Shōsbin probably goes back to the paranymphs of which we perhaps find a trace in the story of Samson's marriage (Judges XV) & in A.G.42(Assyrian susabinu) cp. Jacob,ZRVW.p.334.

It may be that in G.H.161 "his friend" (רעהו) stands for something corresponding to the Shōsbin: the Shōsbin of Jewish custom was sometimes guilty of more serious misconduct than slander(Krauss II,43 & (note)

"Ursprünglich waren aber diese Paranymphen die Zeugen, welche die Bettbeschreitung zu konstatieren hatten, die als familienrechtsgeschäftlicher Akt gewiss der Offenkundigkeit bedürft hatte, wie in nordgermanischen Rechten die Besteigung des Ehebetts im Gegenwart der Hochzeitsgäste stattfinden musste und sogar die Mindestzahl der Geschäftszeugen auf sechs bemessen war" (Neubauer, Eheschl.& Ehe Scheidungsgeschichte,p.61). According to a Talmudic source quoted by the same author it was the duty of two paranymphs to sleep in the same room with the bridal pair,assist them in the act of copulation, & see that no deception was practised in regard to the "tokens of virginity".(op. cit.p.62). This, however, rests upon a disputed reading: it may nevertheless be in accord with early practice when emphasis was laid upon actual copulation. The early narratives in Genesis appear to lay greater stress on this matter than the later records(cp.Gen.IV,1:XVI,4:XXIX,30:XXXVIII,2)

b) Wedding Procession(Zeffa).

This appears as a general accompaniment of Oriental Weddings. Its practice among modern Arabs is attested both by Lane & Jaussen. Whether it was always of the same boisterous nature as the 'zeffa' of later times may be open to question. Wellhausen claims to have found little or no trace of it in Early Arabia although he admits it was frequent in ~~Assyri~~ Syria(op. cit. p.443). It is usually explained as a reminiscence of Marriage by Gapture, but it may be equally well explained by animistic belief & primitive superstition. With this point the discussion does not concern itself.

In the C.H. it is not mentioned or referred to but the opportunity for it was inherent in the 'deductio puellae in domum

mariti', and the usage may have been present. Such a custom, however, is more likely to have been practised outside the city life.

In the A.G. there is no reference to 'zeffa' and according to this source the wife appears more frequently as residing in her father's house which type of marriage has no 'deductio puellae'.

In the O.T. there is little in the earlier records to indicate such a custom. Rebekah sets out with the good wishes & blessings of her kinsfolk (Gen. XXIV,60) & in due time she arrives and "Isaac brought her into his mother's tent & took R., and she became his wife". (cp. Tobit X,12)

If the earlier records afford little material the later may help to fill up what is lacking. The bridegroom attended by his companions (John III,29: cp. Judges XIV,10-11) come for the bride & with great rejoicing she is led to the house of her husband. In the streets is heard "the voice of mirth & the voice of gladness, the voice of the bridegroom & the voice of the bride" (Jer. XXV,10: XVI,9: VII,34). Music was not lacking and the company with its noise & dancing resembles the zeffa as described by Lane (Mod. Egyptians p. 172ff). The procession was headed by the Shosbin with his myrtle branch(אשכול, אשכולות) while the litter of the bride was carried by her most honoured friends. Sometimes she was set on a horse or elephant: as the procession moved on its way everything -even a funeral cortege- had to give way to it. Rabbis forsook their studies & even kings relaxed a little to take part in the joy of the procession. Wine & oil flowed in great abundance, while for music the flute, harp, zither, castanets, & cymbals were all pressed into service. The sixty year old danced like a maiden of six summers (Krauss, op. cit. II,39-40). If it were night time torches (faces nuptiales) were employed (Matt. XXV,1-12), and to the Chuppah

they led the bridal pair, where the "sons of the bridechamber" waited without & received the glad tidings of the happy consummation of the marriage (cp. Lame, M. Egypt. p. 177-8)

The singing that accompanied the procession, נישואין, נשואין gave thea designation of marriage- ὑμέναια.

Marriages might be, and were effected without this pomp and ceremony (קידושין, אירוסין); to save expense & perhaps publicity a quiet wedding (אירוסין) was possible & equally valid.

c) Wedding Feast.

Again our other sources are silent as to this although A.G. refers to a feast & regulates the disposal of comestible gifts.

In Gen. XXIX,27, we have a feast that lasted 7 days: Judges XIV,12, relates the same duration. TobitVIII,18, doubles this period but there were special circumstances in this case warranting unusual joy. Seven days is the usual period according to the Talmud.

According to Prof. Paterson (HDB,II,272) the feast may be one of the most original features of marriage. "Among primitive peoples the public meal has a quasi-sacramental character, and it was quite in harmony with this mode of thought to look on the feast, of which bride & bridegroom partook in company with their friends as the rite by which they were definitely placed upon the conjugal footing". This would be akin to the idea underlying the Roman marriage by Confarreatio. Equally primitive, however, the writer ventures to suggest is the stress laid upon actual copulation & the use of 'Chuppāh', which may next be considered.

d) The Wedding Tent(Chuppāh)

The word חֻפָּה occurs three times in the O.T. although it is not employed in connection with actual marriage. In Psalm XIX,5,"as a bridegroom cometh out of his chamber", we have the association of Chuppāh & bridegroom. In Joel II,16,"let the bridegroom go forth of his chamber(חֶדֶר) and the bride out of her closet(חֻפָּה), we have the association of bride & Chuppāh. The reference in Isaiah IV,5, is ambiguous as it stands,but Chuppāh is here used for a booth or covering of some kind. Though חֻפָּה is not used in II Sam. XVI, 22, the usage referred to is is that of חֻפָּה."They spread Absalom a tent -lit. the tent- upon the top of the house & Absalom went in to his father's concubines in the sight of all Israel". Further in the Song of Songs I,16,the word עֶרֶשׂ occurs, "our bed is green",the covered bridal bed which as the Arabic shows was originally a booth(Smith,Kinship & Marriage, p.199). The house where the ceremony takes place is known to the Talmud as בֵּית חֻפָּה: Chuppāh is joined with Ḳiddūšîn in the blessing & is not infrequently used as a synonym for marriage.

According to Krauss the Chuppāh "ist die Stätte des vertraulichen Verkehrs zwischen den Brautleuten vor und des ehelichen Verkehrs zwischen ihnen nach dem Hochzeitsmahl". The tent may have been originally the mother's tent,as Smith suggests(op.cit.p.200), but as it appears among the Hebrews it is the tent or private place in which the marriage was consummated. The central importance of this is seen from the fact that, as already indicated, the Chuppāh supplied a name for Marriage, marriage being described, as' the 'tenting' (Wellhausen,op.cit.p.444:cp. HDB.,Vol.III,p.272). In later Judaism only the symbolism was retained & the Chuppāh became the

canopy under which the bridal pair stood at the ceremony: it might be formed by ~~the bridegroom~~-casting a veil or mantle over the head of the bridal pair(Abrahams, Jewish Life in the Middle Ages,p. 200) Perhaps there is some such symbolism in RuthIII,9, Ezekiel XVI,8.

Although no reference to the use of Chuppāh as an institution is found in the O.T. the Book of Tobit describes something that closely represents this ancient usage-"and after that they were both shut in together"(Tobit,VIII.4)

Before entering the Chuppāh the husband recited the seven nuptial benedictions(Tobit VIII,5: Keth. 7b: cp. Lane, Mod. Egypt. p. 177)

Entering into the Chuppāh signified actual surrender of daughter by the father to the man who becomes her lord as well as her husband. (Kidd. 5a) The bride remained in the Chuppāh seven days, the duration of the feast, whence comes the expression "the seven days of her" or "of the Chuppāh"(Jewish Encyclo.,article'Chuppāh'). Similarly the wedding party was called "benē Chuppāh",consisting of the main parties & their respective fathers(ibidem). The father of the bridegroom was required to build & adorn the Chuppāh for his son (Sanh. 108a):occasionally the mother might do so(Sôtāh, 12b).

According to the Talmud Chuppāh was a baldachin made of precious purple & adorned with golden jewels of moonlike shape(Sôtāh,49b).It was later transformed into a portable canopy resting on four poles , carried by four youths:even the spreading of the 'tallith' over them could in later ceremonial,express the idea of marital union.

According to Meissner (B.&A. I,403) this custom is found in Babylon, and traces of it are to be found also in the Sumerian civilisation. Using various sources & documents Meissner describes the ceremony at Babylonian "treten sie unter Wohlgerüchen ein in das

Hochzeits- oder Bettgemach_. 5 bis 6 Tage bleibt der Gatte bei seiner jungen Frau,dann kommt er heraus".

Similarly Langdon (Journal of Oriental Research,1920),founding on 'kallâtu' as being derived from the verb,'kalu = confine,imprison, & the Semitic usage described in the foregoing, finds an equivalent in the Sumerian'e-g-ia' and deduces that there was the same feeling in regard to the privacy of a bride. This he supports by etymological argument. The Babylonian custom may have been derived from the Sumerian,for while 'e-gi-a' does not certainly refer to a temporary canopy,it does indicate a custom of confining a bride to her husband's house immediately after the marriage. According to a young Assyriologist now resident in Oxford, the Jewish custom finds an echo in C.H. 176,"ištu inêmdu",after they were united,literally"they stood together". The language of the Code plainly refers to the period of confinement immediately after the marriage -"from the time they started to keep house"(Johns):"from the time they join hands"(Handcock).This contention is supported by A.T.Clay's Miscellaneous Inscription ,No. 28,col. 5, where the verb'e-gi' is twice employed in the sense of 'leading home a bride', in this case illegally & by force. Langdom renders this as follows in the opening clauses.

tukundibi	if (a man)
dumu-sal- galu- e-su-a	the daughter of a freeman from the street
e-im-gi	took home to confinement
ad-da-ni	and her father
u-ama-ni	and her mother
nuba an-zu-us	knew not of it
etc.	

In regard to Early Arabia Wellhausen remarks "Fur das junge Paar wird ein besonderes Zelt(oder anderweitiger Obdach) errichtet, und dies bedeutsamste Ritus bei der ganzen Hochzeit,davon hat sie den Namen".(op. cit. p. 444)

Lane indicates the presence of a similar usage in his account of Arab custom(Lane, Modern Egypt. p.177-8), while according to Jaussen the usage is preserved among the tribes of Moab:- "Dans les villes... la nouvelle épouse est introduite dans la maison de l'époux où une chambre ou un réduit quelconque lui est réservé... dans les campements, un endroit spécial dans la tente appelé hullah est disposé pour la fiancée: c'est là qu' elle passera huit jours en comptant comme première 'le soir de l'entrée': ce terme désigne le moment où pour la première fois l'époux pénètre son épouse".(Coutumes des Arabes,p.54)

"And Cain knew his wife"(Gen. IV,17): stress is laid in the early narratives upon this actual copulation or coitus. The Talmud also emphasises this: " der Eintritt der Menstruation verbietet religiongesetzlich den Coitus und bedingt dadurch die Aussetzung der Chuppāh(des Trauungstermins)"/Keth. 2a.) Examination was usually made of bride & bridegroom to ensure they were in suitable physical condition(Neubauer,op. cit. p.226)

There is no reference in A.G. or C.Ht. to this custom but sufficient evidence has been adduced to show it was general.

Prohibited Degrees.

FORBIDDEN DEGREES.

There is a lawful sphere of marriage& within these civilisations,as elsewhere we find regulations as th who may marry & who may not. The ground of the prohibition lies usually in considerations of affinity or consanguinity. Thus we have the list of forbidden degrees which may vary in different countries. In the eaplier records of the O.T. we saw that marriage with near relatives seemed to be favoured & marriage of cousins is very common in Arabia. No such custom as the marriage of brother & sister is found in any of our sources. Abraham indeed was married to his half-sister,& according to 2 Sam. XIII,13, Amnon & Tamar might have been united in wedlock. But the later record is not so tolerant, as we shall observe in the following.

It may be simpler here to begin with the O.T. & mark the list of degrees as it is given in LeviticusXVIII,& XX,11-21, & mark the divergences or additions that are to be found in our other sources. The numbers within the brackets indicate the verses of Levit.XVIII)

A man may not marry on ground of consanguinity

1. His Mother(7)
2. Sister & half-sister(9)
3. Granddaughter(son's or daughter's daughter(10)
4. Father's sister(12)
5. Mother's sister(13)

A man may not marry on ground of affinity

1. Stepmother(8)
2. Father's brother's wife(14)
3. Son's wife(15)
4. Brother's wife(16) :see further "Levirate" p.
5. Wife's mother(17)
6. Wife's daughter(stepdaughter)
7. Stepson's daughter
8. Stepdaughter's daughter
9. Wife's sister during life of former (18)

The Talmud extends this list one degree upwards & downwards. In regard to wife's mother, Talmud does not prohibit Wife's stepmother

but regards such a marriage as highly objectionable. It would seem as if a stepmother had not been prohibited to a man in earlier days. The conduct of Reuben in Gen. XXXV,22 is reprehended rather because it took place in the lifetime of his father. ~~2~~2Sam. XVI, 21,would lend support to the idea that such a union was at least tolerated in the earlier period.

Code Of Hammurapi.

There is no such list here but there are indications that this source was not unconcerned with the necessity of such regulations.[154] 155,6 we have already dealt with & they are not particularly relevant here unless to indicate that social purity was a concern of the legislator

C. H. 157 " If a man lie in the bosom of his mother after(the death) of his father they shall burn both of them".

C.H.158 " If a man after(the death of) his father be taken in the bosom of the chief wife of his father who has borne children, that man shall be cut off from his father's house".(cp. Levit.XX,11; Deut. XXII,30).

Assyrian Lawbook.

There is no parallel here with the list in O.T., but if our interpretation of 34 is correct it would appear that in certain circumstances a man might be married to his daughter-in-law.(v.p.118) According to A.G.47 a man might marry his stepmother.

Hittite Code.

This source is not so alive to moral values as the Holiness Law in Leviticus, as is seen in its treatment of the present matter.

C.Ht.189 " Si un homme sa propre mère viole,punition(a lieu). Si un homme la fille viole punition (a lieu). Si un homme le fils viole, punition (a lieu).

Marriage is not spoken of here nor is the nature of the punishment

indicated. There is no punishment, however, in any of these cases if the parties concerned are consenting to the intercourse. Punishment only enters if force is used in such unions.(190).

A man's stepmother is barred to him by penal sanction,only if his father is still alive.(cp. Gen. XXXV,22: 2Sam.XVI,21)

For such offences Leviticus knows only the penalty of death. The Hittite Code appears also to have contemplated the possible union of two males(189) but this conduct is abhorrent to Leviticus & visited with the penalty of death.(Levit.XX,13)

195A "Si un homme avec l'épouse de son frère couche,tandis que son frère est vivant, punition a lieu. (B)Siun homme une femme libre prend (épouse),puis de même sa fille il prend sexuellement,punition a lieu. (C) Si sa fille il prend (épouse), puis sa mère ou sa soeur il prend sexuellement, punition a lieu."

The first case is adultery & is dealt with under that aspect of the subject.(~~196~~) A mother who is taken to wife has the right to protection against her own daughter, & the daughter, who is taken to wife, has the same right against her mother or sister. This right the man must recognise.

DISSOLUTION OF MARRIAGE.

Marriage was dissolved by a) Death b) Divorce c) Desertion. With the first we do not require to concern ourselves here as it has been referred to in connection with the provision made for widows & the regulations anent wife's property.

Divorce and Desertion.

According to the Sumerian Family Laws the wife has no right of divorce & in the event of her seeking to leave her husband she is to be drowned(SFG 6).

In the C.H.,however, the matter is regulated with more detail. According to C.H. 137 which deals with case of Sal-Me and Šugetum,while the man has right to divorce he has to return the dowry & provide alimony for his children,who follow the mother,and when ~~the~~ they are grown up she is entitled to a portion corresponding to that of a son. C.H.138 shows that a man could put his wife away on ground of her sterility but he must return her tirḫâtu & dowry.According to C.H.~~139~~ if no tirḫâtu was given he must give 1 mina of silver,if he is an amêlu,1/3 mina,if he is a muškênu. "Šamaš-rabi hat die Narâm-verstossen. Ihr....hat sie gezählt(?); ihr Scheidgeld hat sie erhalten. Wenn jemand die Narâmtum heiratet,soll Šamaš-rabi keinen Einspruch erheben. Bei Šamaš,Aja,Marduk und Sin-muballiṭ schworen sie". (H.G. III,13).

As slave is not mentioned it may be inferred that he had not the right of divorce.

But divorce was easier & less expensive if the wife was at fault(141). He could send her away with empty hands or reduce her to the position of slave. This has a parallel in 142 when something of a similar right is conceded to the woman. According to this she might be justified in refusing "Jus Connubii", and if, on enquiry, she is found to be justified in her refusal, she is guiltless and/

gets release, taking her dowry back to her father' house. In this case tirhâtu is not mationed, nor does she receive aliment from her husband. In 143 however, we have something that reminds us of SFG 6 "If she have not been a careful mistress, have gadded about, have neglected her house, and have belittled her husband, they shall throw that woman into the water" But sickness or chronic disease was not a reason for divorce: the man might take another wife but he must keep the sick wife as long as she lives and may not divorce her (148). But if the wife prefers to return to her father's house she may do so and take her dowry but no alimony is provided.

Desertion might be voluntary or involuntary. The former might be only a form of repudiation. A man might simply run away and avoid his marital obligations: his wife might marry another without fear of his return. He has no claim upon her (136).

Desertion, on the other hand, might be involuntary (133). The husband is captured but there is maintenance in his house: wife in this case may not remarry: if she does theyshall throw her into the water (133 A). If on the other hand there be no maintenance she may remarry (134); nevertheless if he be a captive and his wife unprovided for and she remarry and bear children, on his return he may reclaim her though the children of the second marriage belong to their father.

A.G.

Divorce here does not occupy much space. It is a simple enough matter and seems to be entirely the prerogative of the husband.

Si un homme répudie sa femme, s'il lui plaît il lui donnera quelque chose; s'il ne lui plaît pas rien il lui donnera: elle sortira avec les vide"(38). But if she lives with her father & is repudiated, while the husband reclaims his 'dumaki' he cannot take her tirḫâtu which is her inalienable property(39). With reference to her 'širku' or dotal property, in the case of a wife residing with her husband, & that also which her father-in-law has given her on her entry, all this is reserved for her children & in the event of her repudiation "il le donnera à ses fils comme il voudra"(30). For injurious speech & disorderly conduct a wife may find herself divorced; "de ses mari, fils et filles elle n'approchera plus"(2).

Desertion, on the other hand, is dealt with in great detail & the regulations here are more complex than in C.H.

This might be voluntary or involuntary. The first part of 37 seems to contemplate a case of the former. Here a wife is left unprovided for: if she has children she puts them to service & waits for her husband. It is doubtful if she is allowed to remarry. But if she be without children she must wait 5 years & then her marriage is held to be dissolved & her husband has no claim on her. She may remarry. But if the husband should have been held in captivity & succeeded in escaping & returns after 5 years, he shall resume his own wife on proving that such was the cause of delay, & on providing a substitute wife for the second husband. If, however, his wife marries before the expiry of the stated period, on his return at the end of the period of his service he shall take her & her children also, for she waited not the appointed time.

The period of 5 years is reduced to 2 years in the case of the wife of the captive who has neither father-in-law nor children. In this case it appears that the returning husband might resume his wife, no matter how long after the stated period his return may be. In the case of "une ekallait du palais" it is again doubtful whether remarriage was permitted at the end of 2 years. (44)

In this case no provision has been made by the husband for his wife.

if she is an "ekallaitdu palais"
She appeals to the authorities for maintenance and they provide some form of ~~palace~~ temple service; if she is a land-worker they give a suitable allotment and subscribe the cobditions of tenure. After the lapse of two years she is declared a widow and she may remarry. Nevertheless if later her husband returns he may resume his own wife but leaves any children she may have begotten to her second husband to their father. The field he will pay for on the con-;ditions subscribed unless he returns to the king's service. On his death the land must be restored (46). It is perhaps open to question what the last clause refers to and if it is in its proper position here.

In this matter of forsaken women it is not surprising that special consideration should be given by a military power to the case of men captured on military service.

HITTITE CODE.

Doubtless the right of the husband to repudiate his wife was in vogue among the Hittites although no di stinct regulations are given thereanent. But according to Bogh. Stud. VEII 33,53,55, the king of the Mitanni is recognised by Shuppiluliuma as having the right to repudiate his daughter who is given as wife to the former. It was a right in general vogue and deeply rooted in all these civilisations.

In marriage without "kûšâta" divorce is recognised though how it is brought about is not declared (C.Ht 31-33). The parties divide the goods and the wife takes one child. If that was so in marriages of the inferior classes it could not be less so in the case of the superior classes: whence we infer that divorce might

be by mutual agreement. Probably the system obtaining in this respect did not vary widely from that in C.H., but we have no ground for deciding the question.

The problem of the forsaken woman is not mentioned.

OLD TESTAMENT.

The early practice seems to have been very simple. The husband had the right of divorce & could send his wife away at pleasure. A story like that of Hagar shows the hardship of the divorced woman's lot. (Gen. XXI, 9-14)." And Abraham ....took bread & a bottle of water & gave it unto Hagar, putting it upon her shoulder & the child, & sent her away." Hagar of course, was only a handmaid, but it is questionable if the matter was more difficult in the case of a man's wife. Doubtless if she was of the same clan or sept, and her parents were at hand & able to protect her they might, at least, prevent hasty divorce.

The Deuteronomist found here a situation that required regulation.

Deut. XXV, 1, 2," When a man hath taken a wife & married her, & it come to pass that she find no favour in his eyes, because he hath found some uncleanness in her, then let him write her a bill of divorcement (ס֫פֶר כְּרִיתֻת) & give it in her hand, & send her away out of his house. And when she is departed out of his house she may go & be another man's wife."

Here a certain measure of protection is introduced for the wife. The man alone can give the bill of divorcement but it must be for a sufficient reason. The writing of a ס֫פֶר כְּרִיתֻת would take time, more time than the speaking of a hasty word of dismissal. Thus there was time to reconsider the matter. According to Mishnā,

M. Gittin, IX, 10, the cause could only be sexual immorality (Shammai) though the school of Hillel, by various refinements, allowed most trivial matters as cause of divorce. The latter view prevailed although it is noteworthy that in Matt. XIX, 3-9, Jesus adheres to the view of Shammai.

The right to divorce at will is first definitely restricted in the 11th century A.D. when at Mayence it was enacted as follows: " To assimilate the right of the woman to the right of the man it is decreed that even as the man does not put away the wife except of his own free will, so shall the woman not be put away except by her own consent".

The Assouan Papyri (15) show the woman as having certain rights in this matter but it is doubtful if at this period she could do more than force her husband to grant her divorce (גט). The case of Salome, who sent a bill of divorcement to her husband Costobarus, is an exceptional case & the historian is careful to add "this was not according to the Jewish Laws." (Josephus, XV, 7, 10)

In the later period divorce could not be hasty for the wife was protected by her Kethūbāh. (Ḳidd. 6a) In Rabbinic Law there were 4 kinds of divorce:-

(1) By mutual consent, in which wife receives her Kethūbāh
(2) By husband where wife is guilty: wife forfeits Ḳethūbāh.
(3) On petition of wife: if husband is guilty, court grants divorce.
(4) By court itself without petition of either party, even though they desire to abide in marriage. (Mielziner, Jewish Law of Marr. & Divorce)

The wife never obtained the right to give her husband a "geṭ", but she could enforce him to do so. According to Shūlchān ʿĀrūch the Jewish husband may give 'geṭ' on 7 separate grounds, while the wife may secure it on 8 grounds (Eben Haʿ Ezer) . In the same way the

court may dissolve a marriage for four separate reasons. Into the detail of this we need not enter, but it marks the development that has taken place between Exodus XXI, 11, and the Talmudic period.

The Deuteronomist introduces two further restrictions of the man's right in Deut. XXII,13- 19 and XXII,28-29. If he falsely accuse her of antenuptial uncleanness, or has ravished her before marriage-in both cases he is deprived of the right of divorce. To these the Mishnāh adds three other instances. He is not permitted to divorce her (1) when she is insane, (Yeb.XIV,1,) (2) if she is in captivity-it is his duty to ransom her at any cost, (3) when she is a minor, so young as to be unable to understand or take care of her "get". (M. Kidd. IV. 9) (cf. Gittin, 64b)

According to Deut.XXIV,1-5,a man might take back in marriage his divorced wife only if , in the interval, she had not been married to another. It is noteworthy that Hosea 111, 1 & 2 Sam. 111,14 seem to be unaware of this law. This is contrary to the practice of Islam which does not allow remarriage unless in the interval the wife has married another man. But according to Mishnāh such marriage was not permitted.

(1) if woman was divorced on suspicion of adultery. (Gittin,4,7)
(2) " " " " because she had subjected herslf to obligation of certain vows(ibidem)
(3) if woman was divorced because of barrenness(Gittin4,8)
(4) if third person had guaranteed payment of kethūbāh (B.B. X,9)
(5) if husband has consecrated all his property to religious purposes subject to wife's kethūbāh (Ar,VI,2)

In addition she could not marry her paramour or the messenger who brought her 'get' (Yeb. 2,9): an interval of three months must elapse before her remarriage(Yeb. 4,10: cp. Iddat in Islam)

The children of the divorced woman remained in her custody but

tody of boys after sixth year of age could be claimed by father.
eth. 65b, 102b). Hagar takes her child with her when Abraham
nds her away.

The Bill of Divorcement in its simplest form is found in
sea II,2 "She is not my wife: I am not her husband"
later Judaism the form is more elaborate & the regulations anent
s preparation are equally elaborate. An example is her given.

On the --day of the week and -day of the month of-- in the year-- since the creation of the world (or of the era of the Seleucidae), the era according to which we are accustomed to reckon in this place, to wit, the town of -- do I -- the son of -- of the town of --(and by whatever other name or surname I or my father may be known, and my town & his town), thus determine, being of sound mind & under no constraint; and I do release & send away & put aside thee--daughter of-- of the town of--(and by whatever name or surname thou & thy father are known & thy town & his town), who hast been my wife from time past hitherto,& hereby I do release thee & send thee away & put thee aside that thou mayest have permission & control over thyself to go to be married to any man whom thou desirest, and no man shall hinder thee (in my name) from this day forever. And thou art permitted (to be married) to any man. And these presents shall be unto thee from me a bill of dismissal, a document of release & a letter of freedom, according to the law of Moses & Israel."

---the son of --, Witness.
--- Do. --- Do.

Desertion.

There is little anent this in the O.T. The position of the widow & the orphan give rise to many of the humane enactments of Deut. but he gives no regulation similar to that in C.H. and A.G. But that the problem existed is evidenced by the attention devoted to it in the Talmud. The עגונה is a familiar figure in later Jewish law & her lot is not enviable. The forsaken woman cannot marry again until her marriage is dissolved by death or divorce. No lapse of time could suffice, as in A.G.: death must be proved although in the case of the forsaken woman the hardship was relieved by the acceptance of less than the usual legal proof. One witness instead of two might suffice: even women &

slaves could be accepted as witnesses here(Yeb. [illegible] 16,7) : hearsay evidence might be deemed sufficient or even a well grounded report(Yeb.16,6: T. Yeb. 122a). The situation was all the more urgent when it is borne in mind that betrothal was really as binding as actual marriage & that an affianced bride could only be released by a "get" or by proved death. The problem became very pressing in the periods of persecution & in the time of the Crusades.(Neubauer,op. cit. p.199).

That all this of the Talmud refers to a matter that has long been felt as a problem we are warranted in concluding from the occurence of the same root- עגן - in Ruth I,13: " Would ye tarry for them till they were grown? would ye stay for them from having husbands? הלהן תעגנה לבלתי היות לאיש. The עגונה must have been a familiar figure in these early days & the problem of her support was a serious concern to the legislator, more serious if she was encumbered with children. The Talmud (Ket. 107a) enjoins provision for her- "so übernimmt das Gericht seine Güter und versorgt und verpflegt seine Frau"- & the Bethdin could make similar arrangements to those of A.G., but it is doubtful if this was done in the earlier period.

Summary.

The right of divorce was in the hands of the husband, and was exercised with a large degree of arbitrariness. In tribal life such as that of the early Hebrews restraining factors might be present in the propinquity & protection of the wife's kinsfolk. Where this was lacking her case might be very grievous ,as may be seen in the case of Hagar. In a developed civilisation, however, this right of the man was adjusted to other rights & duties, and so we have the legislation

Hammurapi, which is the most advanced of all these Codes. The uteronomist felt the pressure of the problem,& later we find it it Ezra & Nehemiah & Malachi. The Assouan Papyri reveal a new view of e matter & the Talmud makes it the subjegt of careful regulation. hus we see Judaism adapting, in various ways, the old right until it ses its arbitrariness & becomes eventually a right of both parties. e A.G. appears nearest in spirit to the early record of the O.T.: e right here is as the old patriarchal right, although the woman is t wholly unprotected. But her rights, as we have seen, are few. In ht. & the civilisation it represents we may assume that the customary ght of the man is recognised but here also there are elements that nder it likely that the wife was not without rights in this matter. he practice of desertion is not confined to ancient times & it gives se to problems, both moral & material. The latter alone concern C.H. e state is concerned only with the visible means of support. A.G. is ss considerate of the wife & unduly careful of the husband's interest: the case of soldiers, as one might expect in a military empire, it ows an excess of consideration. Among the Hebrews such regulations may t have been necessary to the same extent: they were neither given to olonial expansion nor military conquest in early times. In the later riod the matter became an urgent question on account of the military cursions of foreign powers, the Diaspora,& later the Crusades & mediaev. persecutions. Thus legislation on the subject continued through the lmud until after the Middle Ages.

MORAL SUBVERSION OF MARRIAGE.

Adultery.

Adultery.

This is the moral subversion of marriage & is regarded seriously by all our sources.

Code of Hammurapi.

C.H. 129 "If the wife of a man be taken lying with another man, they shall bind them & throw them into the water. If the husband of the woman would save his wife, or if the king would save his male servant (he may).

This would suggest by the language used that the pair were taken "in flagrante delicto". The penalty is death although later the form varied; casting from a tower or slaying with the sword were other methods of despatching the culprits.

The wife may clear herself from suspicion on the part of her husband by taking an oath(131): but if a 'fama' has spread abroad regarding her fidelity she must go the water & submit herself to the ordeal.

If wife has so far forsaken the path of virtue as to bring about her husband's death for the sake of her paramour she shall be impaled(15

C.H. 133A("If a man be captured....) if that woman do not protect her body & enter into another house they shall call that woman to account & they shall throw her into the water."

This is the case of the wife whose warrior husband is absent but in whose house there is maintenance.

Acc. to Johns the punishment in 129 is better translated " they shall be strangled & cast into the water".

Intercourse with a daughter is barred on penalty of banishment(154).

Assyrian Lawbook.

There are several enactments in this source. A.G.13 is simple & direct. The wife makes a rendez-vous with another man who knows she is a maried woman. "On tuera l'homme et la femme".15 deals with case of husband surprising his wife & the adulterer in the act: he

may slay them offhand & the law will hold him guiltless. The rest of this article may have been interpolated, as Koschaker thinks; it is less direct than 13. He may have them arrested & convicted & after judgement given he may slay them. But if husband modifies the punishment to mutilation in case of wife, he must modify it also in the case of her partner, in which event he contents himself with the castration of the latter. If he absolves his wife, he must also let her partner go scathless.

In both these laws the jurisdiction seems to be in the man's own hands & the execution of the penalty, even after judgement of the court.

In 14 the question of intent is emphasised: if the adulterer knew she was married the penalty shall be appointed by the husband for both. If the man was ignorant of her status he is free, & the husband deals with his wife as he sees fit. Acc. to 17 on a fama' arising the wife must submit herself to the water ordeal. But to prevent the slandering tongue, the man who raises such a report & does not substantiate it receives 50 lashes for his pains(18).

In case of rape of a married woman she is free & man dies(19). But sometimes the woman took the initiative in an intrigue: the man in this case is free but if he has forced her the same penalty is laid upon both.(16). 23 deals with procuring of a married woman & regulates the matter according as the parties were consenting & acting with intent. If they all were cognisant, the adulterer shall suffer the penalty of adultery: as the man deals with his wife so shall the procuress be dealt with. If the man does nothing to his wife, then both adulterer & procuress go free. But in the event of the wife being taken by surprise in this way, on her confessing it she is

e, while the other two reap the reward of their wickedness in the
th penalty. If she does not confess it, the man may punish his wife
he sees fit: her confession or the lack of it does not alter the
te of the others. 24 is another complicated case which concerns two
ves & two husbands. The wife of one by her suspicious behaviour
ings suspicion uponothers. The Law regulates this by a combination
'lextalionis',civil law & religious ordeal.

e penalty for adultery in the Lawbook is death although that penalty
y be modified. The Book takes cognisance of intent & consent. Sum-
ry justice may be executed upon the criminals: otherwise the offence
t be duly proved before competent authorities.

Hittite Code.

t.195A, which we have already cited(p.97) deals with adultery of a
with his brother's wife:"punition a lieu",although the Code does
indicate further the nature of the punishment.(cp.Levit.XVIII,16)
deals with rape of a married woman:the man dies. If however, the
was done in a house, where presumably, the woman could have cried
& procured assistance,it is regarded as done with consent & is
ltery. Both die in this case, & if her husband takes them in the
he may slay them on the spot with impunity.

t if the man wishes to save his wife he can do so: he brings her
the door of the palace & makes known his request. In this event
enslaves(brands the head of) her partner. If he desires that the
should take its course then it does so. "le Roi les tue et le Roi
fait vivre".

re again, as in A.G., the jurisdiction in this matter seems largely
mitted to the hands of the man. But when it is brought to "the
r of the palace" it is treated with due legal form. Doubtless also

the husband's execution of justice in summary form was within the jurisdiction of the Public Law. It was a delegated power both here & in A.G.

Old Testament.

Adultery is expressly forbidden in the 7th commandment(Exodus XX,14) "The adulterer & adulteress shall surely be put to death"(Levit. XX, 10)cp. Ezekiel,XVIII,11,13,"he shall surely die". cp.Ezek.XVI,38-40. Whether the extreme penalty was exacted is doubtful (Lightfoot,Horae Hebraicae ad Matt. XIX,8). Ezekiel in XXIII,25,appears to suggest mutilation as a form of punishment for this offence:"they shall take away thy nose & thy ears",a form which is reminiscent of A.G. Burning was probably the earliest form (Gen. XXXVIII,24,"Bring her forth & let her be burnt"). This assuredly meant more than branding as a slave.

Deut.XXII,22," If a man be found lying with a woman married to a husband,then they shall both of them die, both the man that lay with the woman,and the woman: so shalt thou put away evil from Israel".

Deut. "" 23," If a damsel that is a virgin be betrothed unto a husband,and a man find her in the city & lie with her then ye shall bring them both out into the gate of that city & ye shall stone them with stones that they die".

The punishment in the former case is administered by strangling: in the latter by stoning. We may infer from this that the woman in John VIII,1 was a betrothed virgin. But though the O.T. is so unambiguous in its denunciation of this sin, it is questionable if practice to any large extent followed the course enjoined.

Leviticus XIX,20, deals with the case of adultery with a bondmaid betrothed to a husband. "She shall be scourged: they shall not be put to death, because she was not free.And he shall bring his tresspass offering unto the Lord".

the case of Hosea there is no mention of a death penalty for the thless wife. In later Jewish practice the penalty was divorce & forforfeited her dowry. Joseph who was betrothed to Mary was "minded put her away privily"(Matt.I,19).

Ordeal of the Bitter Water is appointed in Numbers V,12ff. to deal h a case where the husband has reason to suspect his wife of adultery as no witnesses to prove it.

the conception of adultery we may say of all these sources that h woman could break only her own marriage by adultery,while the man only guilty of adultery as he broke another's marriage. Free ercourse was permitted to men with other women generally,save ried women. A married woman,on the other hand, could not have ercourse with any other than her own husband without being guilty dultery. A man's promiscuous intercourse might lead to an action damages(Exod.XXII-16,Deut.XXII,29).

LEVIRATE MARRIAGE.

LEVIRATE MARRIAGE.

This institution is found in the O.T., A.G. and the C.Ht., but is not mentioned in C.H. It is common to many civilisations and seems a common practice in widely separated peoples (Frazer, Folk-lore of the O.T., II 263ff.) We shall deal first with Old Test. beginning with the regulation as it is given in Deut. According to this a right is conceded to the widow in certain circumstances, although it is not a right enforced by legal sanction: nevertheless it may be sustained by something that had almost the force of a legal sanction, the ceremony of Chalîtzā (חליצה). The force of public opinion and exposure to contumely of the kind mentioned would deter a man in most cases from avoiding performance of a duty which he owed to his brother --to raise up seed for him. Deut. is not concerned as to whether the "iabhām" (יבם) is already married, or betrothed or celibate; the law operates without respect to such considerations.

The purpose of the enactment of Deut. may be best understood after a study of two passages that illustrate the custom which are both older than Deut. -Gen.38 and Ruth.

In the former of these we see the custom operating. Er the first husband dies and Judah says to his son "Go into thy brother's wife and raise up seed to thy brother". There is no mention of Chalîtzā here and it is the father who directs the matter; although Onan is unwilling to show fraternal piety the 'patria potestas' is too strong for him to refuse. But he spills the seed and "the Lord slew him also" but the custom still operates although Judah is unwilling to risk his third son Shelah. But Tamar has a right to expect marriage with the next brother of her late husband although she may have to wait "till Shelah my son be grown." According to AG such a son

st be at least 10 years of age, and a nubile age is here ggested. But when the marriage is delayed unduly Tamar resorts guile and finds herself pregnant by Judah himself, and guarantees f the fact are in her possession. It is the dénouement that is st noteworthy "And Judah acknowledged them and said she hath been re righteous than I: because I gave her not to Shelah, my son" t is equally noteworthy that Tamar as a levirate widow is guilty f adultery in the judgement of the writer. Judah admits that he s done something wrong and it is questionable if the early story ally meant to condemn Tamar for her actions though the later writer es. A verse like Ruth IV,12, "And let thy house be like the house f Pharez whom Tamar bare unto Judah," would suggest that the conduct f Tamar, so far from being blameworthy appeared meritorious in the eyes f the early Hebrews.

Take the second illustration. Here we have the same custom lthough we find an extension in the range of its operation. It is objection to state that it did not operate in the case of Naomi's ons; they may have died at the same time or in such circumstances f time andplace as made it impossible to observe the custom of Levirate. both Ruth and Orpah are childless we may presume that both husbands ied early. Naomi's words clearly imply her knowledge of the virate marriage custom, (Ruth I,11) and again we find that nubile e is suggested - "Till they were grown," (Ruth I,13).

The point to observe in this case is the extension of the scope thin which the law operates. In the first story the duty falls on the brothers in the order of seneriority and from the story in e Gospels (Mt. XXII,23 ff) we may infer how it was ordered. Here ere are no brothers left but the duty appears to devolve on the

next of kin, & failing him, it passes to the next again after the former has shed his right in formal manner(Ruth,IV,7). Furthermore there is not only the duty to marry the widow but there is the added duty of redeeming the inheritance(RuthIV,5). The purpose of it in the words of Boaz "that the name of the dead be not cut off from among his brethren & from the gate of his place". (Ruth,IV,10)

There is no need to concern ourselves with the origin of the Levirate, but only with the reasons for its observance in Israel. In the story of Tamar the purpose is "to raise up seed to thy brother" (Gen.XXXVIII,8) "Elle se conforma dans la limite de son pouvoir à la loi du lévirat". (Cruvelhier, Revue Biblique,1925,No.4,p. 528). It was a calamity that a man's name should perish & that he should have no posterity: a measure of that calamity is seen in the joy that greets the birth of a son. Further in the story there may be traces of an older idea, that when a woman is married she is given not only to a man but to his family & has a claim to marriage which is not exhausted or dissolved by the death of her husband. It may not be an idea so clearly expressed as the corresponding idea of the inheritance of wives of which we find traces in O.T. (2Sam.III,7:XVI,21: 1 KINGS,II,21) but it constituted a right & protection for women. That this right & protection could have a very wide range is evidenced by the story of Ruth wherein we have the additional idea that a man's name & his inheritance are not to be separated. The fact that the brothers are living in indivision reveals that it is the ancestral acres that are in question. A story like that of Naboth(1 Kings,XXI) shows the strong bond that existed between family property & persons. "Dans ce pays on ne concevait pas de famille denuée de patrimoine foncier" (Cruvelhier, op. cit. p. 530)

That idea may be latent in the story of Tamar & it may be inherent in the Hebrew word ייבם. The purpose of Deut. is to protect the widow: her lot must have been hard enough. " The widow alone was benefited by the law: & it is a fair inference that her interests were here the law-giver's care".(I. Mattuck, Studies in Jewish Lit., 1913,p.213).Without an heir the widow could have no claim on her deceased husband's property.Naomi in Ruth(IV,3) seems to deal with the property but generally they were excluded from inheritance & the later Law confirms this(Num. XXVII,8-11). According to Num. XXVII,8, the existence of a son or daughter gave her that right but in the Deut. legislation only the existence of a son could assure her maintenance from her husband's estate(ibidem, 214).

Is. I,7;Micah II,9;Exodus XXII,22, show how hard the lot of widows might be. 2KINGS, IV,1, give a particular example & Deut. by many references shows that the problem was urgent(Deut.X,18:XIV,29: XXIV,19). In the Priestly document the position of the widow has improved & we find daughters capable of inheritance in the absence of a son. Marriage with a brother's wife is banned by Levit.XVIII,16, but Deut. is plainly unaware of such a regulation. The changing conditions had made it possible to let the older usage fall into desuetude: women were protected in other ways & were no longer regarded as property. Chalîtzâ became a form although it was generally required,but into the refinements of Rabbinic Law we need not enter. For later Judaism it lost all meaning:"the woman is no longer a chattel belonging to her husband. To consider her as such may at one time have served the purpose of ensuring her welfare but her rights are now guaranteed by her fully recognised status. The whole basis of the institution has,therefore, fallen away & its usefulness has gone". (Mattuck, op. cit. p.232)

Assyrian Lawbook.

A.G.31 Si un père à la maison du beau-père de son fils du biblu a amené, porté, la femme n'étant pas encore livrée- si son second fils dont la femme demeure dans la maison paternelle vient à mourir,- la femme du fils mort à l'autre fils qui à la maison du beau-pere a porté(certain(cadeaux),il la donnera en mariage. Si le maître de la fille qui l'apport a reçu,à livrer sa fille ne consent plus,-s'il lui plaît, le père qui l'apport avait fait, sa belle filleprendra, et à son fils la donnera:-et s'il lui plaît,tout ce qu'ilavait porté plomb, argent, or, non les aliments,en capital il reprendra:- aux aliments il ne touchera pas.

The main point to be observed here is that we have Levirate in the case of the widow. It is not said that she is childless but, simply, that the father has a right to give her to his son whom he has betrothed to another. With the question of the latter's disposal we need not concern ourselves meantime.

A.G.32 Si quelqu'un à la maison de son beau-père a porté des cadeaux et si sa femme vient à mourir;-et si d'autres filles du beau-père existent, avec le consentement du beau-père au lieu de la femme morte, une fille du beau-père il peut épouser; et s'il veut il peut reprendre l'argent qu'il a donné; blé, mouton et tout ce qui est aliment on ne lui rendra pas; il reçevra seulement l'argent.

A.Ga.34 Si une femme demeure (est mariée) chez son père, si son mari meurt et si des fils existent.....son.....selon..... ....à son choix.....et.....à son beau-père comme mari(?) il la donnera; si son mari et si son beau-père meurent,et si elle est sans enfants elle devient veuve, elle ira où elle voudra.

A.Ga 44 Si quelqu'un du parfum sur une tête a versé, ou des hurûppâti a apporté ,si le fils à qui on a promis une femme meurt ou disparaît,parmi les fils restants (du père),depuis le plus grand jusqu'au plus petit qui aurait 10 ans,à celui qu'on voudra on la donnera. (line 27) Si le père meurt et si le fils à qui une femme a été promise meurt aussi,s'il y a un petit- fils du mort ,ayant 10 ans,celui-là épousera (la fille). Si à la limite de 10 ans les petit-fils sont plus jeunes le père de la fille à qui il voudra,la donnera,et à son gré, retour (de cadeaux de fiancailles) -à égalité rendra. (Line 36) S'il n'y a pas de fils,tout ce qu'il a reçu: pierre precieuse et tout, sauf les aliments,en capital il rendra; les aliments il ne rendra pas.

In these regulations we are dealing with something that only faintly resembles the law of Deuteronomy. But we may find something here that resembles what we find in the older story of Tamar.

In the first place Levirate of the widow is not referred to except in article 31 where the wife is in her father's house & her husband dies. In this case the brother is given his deceased brother's wife, although he is affianced to another woman. It is possible to maintain, in view of the terminology used, that the deceased here was only betrothed(Koschaker,Quellenkrit. Untersuch. p.43) but it seems, on the whole,preferable to think that the marriage has been effected & that the woman is a widow. The word 'aššatum' is applied to a betrothed woman but it certainly also means wife.Both Jacob(ZVRW,1925,p.340ff.) & Cruvelhier (op. cit. p. 533ff.) regard this as Levirate of the widow. The articles that follow reveal something additional & give us a two-sided or reciprocal Levirate in regard to Betrothal.

The father acts for the son & directs the affair. A betrothal that has been duly effected is not nullified through the disappearance or death of the fiancé: a right has been established by the giving of the biblu & that right is not easily or speedily exhausted. Should the fiancé die it is open to ~~the~~ his father to take the fiancée & give her to any of his sons provided they be over ~~QP~~-10 years of age. But a complication arises if the fiancé's father be dead: the patria potestas is absent & none can compel the brothers. In this event the marriage of the fiancée devolves upon a son of the deceased fiancé(probably the issue of a former marriage), provided he is over 10 years of age. She may be given to such a son if he is less than 10 years of age ,or the gifts may be returned. Further according to 34 it would seem that if fiancé dies & has no brothers or sons then his father is to marry the fiancée. When all these steps have been exhausted the right, established by the giving of the biblu, is exhausted & the father of the fiancée is at liberty to bestow his daughter where he will.

Koschaker holds that lines 27-35 form a gloss, & certainly the matter would be simpler if we could believe that 19-26 was originally followed by 36-39. That would omit the words from "si le père meurt" ....."à égalité rendra", & leave a law more easily understood. Cruvelhier is inclined to follow K. in his reconstruction of the text. The text, as it stands, is capable of elucidation as we have sought to show, & it may be well to remember in this matter the axiom," lectio difficilior praefertur". The case may have been stated here because of its complicated nature. The question of to whom the gifts are to be restored is not decided but the ordinary laws of inheritance would regulate such a matter: if there were no brothers the next of kin would inherit.

Article 32 deals with a case of the fiancée dying & is the complement of 31. Art. 32 allows the man to take 'au lieu de fiancée morte' one of her sisters, provided her father consents. Art.32 would appear to suggest that the father of the deceased fiancé could take his intended daughter-in-law even against her father's will, but this is doubtful. Probably both situations were handled in the same manner & a return of gifts would end the matter.

The A. G. seems more complicated than the Hebrew law,& more mechanical in its working. The conception of property rights is worked out to the last syllable of the contract. The range of the Assyrian Law lends support to those who see in Tamar's action something meritorious, and judge that such marriage with a father-in-law may have been permitted by ancient Hebrew custom. The A.G. is little concerned with the person of the widow & it is doubtful if levirate of the widow was largely practised here. The language in A.G. 44 is not imperative save in the case of the ten year old son. The matter would appear to

ave been optional. The principle of monogamy may have operated as check to the Levirate. That might explain why in art.26 we find widow without child & brothers living in indivision & no mention of Levirate. That may further explain why the father does not give the fiancée to the sons in order of seniority but according to his pleasure. The Lawbook details arrangements for the provision of widows in various circumstances(A.G.26,27, 29, 35,47) . It is worthy of note in this connection to observe that the Hittite Code(193) only allows digamy in this matter in the absence of an unmarried brother.

It may be questioned whether the Levirate of the widow operated commonly among the Hebrews: had it been so Deut. would not have felt the problem so pressing & there would have been no need for his legislation on the subject. In A.G. it is certainly not enforced with any emphasis, although there is no reason to deny its presence. E. Ring is in error when he says " das assyrische Recht irgend eine Witwen-Levirat nicht kannte".(Isr. Rechtsleben,p. 44). Probably the custom would not have been referred to at all in this source, had it not been that in 31 a case of some complexity calls for mention. In this article we see that something unusual has emerged through the operation of the old custom of levirate of the widow.

There is this distinction between the Hebrew & Assyrian law,that the former is more concerned with personal, the latter with property rights. Further the Hebrew is motived by consideration for the dead,while the Assyriam thinks mainly of the living. In the O.T. it operates like a moral law: in the A.G. it operates like a ruthless mechanism. "L'esprit des deux lois est très different chez les Hebreux et chez les Assyriens" (Cruvelhier,op. cit. p. 524).

Code Hittite.

he custom of Levirate is here also.

.Ht. 193 "Si un homme une femme prend, puis l'homme meurt, sa femme
on frère prend, ensuite son père la prend. Si la deuxiéme fois aussi
on père meurt, l frère de lui quelque femme qu'il ait pris la prend.
l n'y a pas de punition".

This appears to imply a general Levirate of the widow. There is no
ention of child. On her husband's decease an unmarried brother is to
ake her: if none such be present her husband's father takes her:
hould he be dead a married brother takes her, & though digamy ensues
t is condoned by the law.

The law does not seem to constitute more than a moral obligation, and
n this respect it resembles the law of Deut. Its purpose is not declar-
d but it seems, as in A.G., to have inheritance in view. Its aim is to
eep property within the family. Again we find here as in A.G. marriage
ith the father-in-law: this we have seen reason to believe may also be
n the story of Tamar. There is no restriction, as in Deut., to the
hildless widow & brothers living in indivision.

Summary & Conclusion.

here is no need to add much to what has been said. A comparison has bee
rawn between the Hebrew & Assyrian forms of the Levirate. Little is
nown of the Hittite custom but what we have seen leads us to the concl-
sion that it has more affinity with the Assyrian than with the law of
eut. In the O.T. the law appears as a duty & fraternal piety is the
ain feature (Gen.38: Ruth III-10: Deut.25) & it is a duty which a man
an evade only with dishonour that was published abroad (Chalîtzā)
A.G. & C.Ht. it is merely a question of right: a man can use his

right or decline to use it as he sees fit. Probably in the case of the widow it was oftener left unused & other provision could be made for her. It was not a right which she could enforce by any sanction, legal or moral. Where it is exercised by the man it is solely on the ground of a payment that has been made previously. Perhaps, on the other hand, we do less than justice to A.G. if we simply state it in that form. It would be right to add that here, when a betrothal has been effected, & the man dies, the woman is not deprived of the marriage she had a right to expect from her father-in-law. Her claim is recognised-as in the O.T. case of Tamar- and made good by her father-in-law, although in satisfying her claim he is also exercising his own right. The woman had a right to marriage in such a case & the Assyrian Levirate with its reciprocal or two-sided effect, helps her to this right. It may be at bottom only a question of property, but it may in its working have prevented many a hardship to persons.