THE ANCIENT ORIENTAL BACKGROUND OF HEBREW LEVIRATE MARRIAGE

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By affording a direct acquaintance with ancient Oriental life and customs archaeology provides the necessary background for understanding many things in the Bible. A very good example of a biblical institution which to the modern western reader is very strange, but which, when archaeological sources are consulted, is seen to have a definite relationship to the practices of other ancient peoples of western Asia, is the law of levirate marriage (Deuteronomy 25:5-10). In this case, however, as in many others, comparative study reveals important differences as well as resemblances between the Hebrew institution and the customs of Israel's neighbors.

Preliminary distinctions

To understand the complicated and confusing facts with which we have to deal in this study several important distinctions have to be observed. The first is the distinction between the end for which levirate marriage was practised and the means employed. In the Israelite institution the end was the preservation of the departed husband's "name." The marriage of the widow to the dead man's brother was the means. Since the same end may be sought in different ways and the same means may be used for other ends, these must be considered separately.

With regard to the end itself we may observe that the preservation of a man's "name" involved at least three things. It involved the provision of an heir for his property, so that it might be kept in the family and in the normal line of inheritance. It involved also the continuation of his personal life in the life of his son, according to a deep-seated conception of the ancient world. To this may be added the idea of welfare in the hereafter as dependent upon the performance of ancestral rites by the descendants. For a man who left no son there would be nobody on earth to perform these rites. The importance of this last motive among the Babylonians is reflected in connection with the water-libation for the dead in a form of malediction used in boundary-stone inscriptions: "May he [i.e. the god Ninurta] deprive him of his son, the water-pourer. . . . The son, the water-pourer, may he take away from him. . . . May he tear out his boundary-stone, destroy his name, his seed, his offspring, his descendants from the mouth of men, and may he not let him have a son and a pourer of water." 2

Other means of attaining the end

Whatever may have been the motives for wanting a son in any particular period or country, the strength and importance of the desire is as conspicuous among the other peoples of the ancient world as it is among the Hebrews. Its satisfaction was sought in various ways. As Sarah, Rachel, and Leah,

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1 This point is discussed in an article on "Levirate Marriage in Israel," to appear in the Journal of Biblical Literature for March, 1940.
2 Quoted by H. Schaeffer, The Social Legislation of the Primitive Semites, p. 49.
finding themselves unable to bear sons to their husbands, gave them their handmaids to render in their stead this vital service, so also did barren wives at Nuzu and in Babylonia. The procedure of Sheshan, who gave his daughter in marriage to one of his slaves to bear him a son, seems to have no clear or close parallel in the ancient Near East.

Laban's action, however, in taking Jacob into his own household and giving him his daughters in marriage, corresponds to the Babylonian custom of errêbu-marriage, by which a man who had no son gave his daughter as wife to a young man who instead of taking her into his own home and family "entered" (erâbu) her father's family, receiving only in part the ordinary powers of a husband over her. Either this practice or one closely related to it appears in two of the Nuzu tablets, recording the adoption of young men who at the same time received their adoptive fathers' daughters in marriage.

THE WIFE LIVING IN HER FATHER'S HOUSE

Several sections of the Middle Assyrian laws refer to wives who are said to be living in their father's houses. This suggests that errêbu-marriage was practised by the Assyrians also. It is not easy to determine, however, whether that is actually the meaning of the expression. Conceivably the wife in some of these cases might have left her husband and returned to her paternal home. The Code of Hammurabi allows a wife who hates her husband and has been slandered by him, if she is innocent of misconduct, to "take her dowry and go to her father's house." This explanation, however, is unsatisfactory in several instances. I have elsewhere shown that one of the Assyrian laws, which deals with a divorced woman (§ 38), is best explained as a case of errêbu-marriage.

Another law (§ 36) declares that a deserted wife must wait five years before marrying again; apparently she may not remarry at all if she has sons to support her, or if her husband has made any provision for her support. In this case reference is made not only to a wife who lives in her father's house but also to one whose husband has "made her dwell apart." Presumably the meaning is that the law holds good whether or not the husband has taken his wife out of her father's home. In connection with errêbu-marriage the five years' delay before marrying again would be quite reasonable, since the wife would still be a member of her father's

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3 Gen. 16: 1 f.; 30: 3, 9.
4 Annual X, No. 2; C. H. Gordon, Revue Biblique, 1935, p. 35.
5 Code of Hammurabi, §§ 144, 146 f.
6 I Chron. 2: 34 f.
7 Gen. 29.
9 Regarding the fact that Laban had sons (Gen. 31: 1) see the article just mentioned, pp. 263 f.
10 M. David, Vorm en Wesen van de Huwelijksuitting naar de Oud-Oostersche Rechtsopvatting, pp. 4 f., 19.
11 See references cited JAOS 57, p. 261 (v. s., note 8).
12 § 142.
13 JAOS 57, p. 262.
14 So Driver and Miles translate a-na ba-at-te; see their discussion, Middle Assyrian Laws, pp. 250 f.
family and he might fairly be expected to support her. The case of the wife whose husband has "made her dwell apart" is not so easy to explain, because for five years she would have no one responsible for her support. The Code of Hammurabi (§ 136) allows a deserted wife to "enter another house" without any such delay, and her husband, if he later comes back, cannot compel her to return to him. If a man is taken captive, and his wife has nothing to eat, she may without blame marry another man but must return to her first husband if he comes home, whereas if she has food she must remain faithful to him (§§ 133-5). In the Assyrian laws (§ 45) elaborate provision is made for the support of a woman whose husband has been captured by the enemy. She is required to wait only two years before being free to marry again. The harsh requirement of § 36 as regards the wife who has been living "apart" is therefore hard to understand. As for the woman living with her father, it is not impossible that she has merely gone back to him from the home of her husband, but the distinction between the wife who has been made to live apart and the one living in her father's house favors the view that the latter's marriage was of the errēbu type.

The situation presented by § 27 of the Assyrian laws fits errēbu-marriage perfectly. Here it is said that the woman is living in her father's house and her husband "has been visiting her" (i.e. "entering" repeatedly). The verb used (e-ta-na-ra-ab) is the one from which errēbu-marriage gets its name. The frequentative force of the form employed here, to be sure, does not suggest that the husband has become a member of his father-in-law's family. It may be, however, that the husband took his place only gradually in the household, as in the Sumerian law, according to which the man first came into the home as a visitor, then gradually assumed the place of an intimate friend, and finally by payment of the terhatu became the daughter's husband.

In § 32 the matter is complicated. Here a woman living in her father's house is said to be responsible for her husband's debts "whether she has been taken or has not been taken to her father-in-law's house." The meaning of this would seem to be that a wife who has been taken to her father-in-law's house cannot escape liability for her husband's debts by going home to her father; indeed, even a wife who has never been taken from her father's house at all is equally liable for her husband's debts and punishments. Since the Assyrian laws appear to be merely amendments or supplements to a previously established system, this law was no doubt expressly designed to extend a responsibility already acknowledged as regards the wife in a normal marriage to women who had either remained in their fathers' families by errēbu-marriage or had returned to them.

Provisions regarding widows living with their fathers will be discussed presently. The facts already noted, however, are sufficient to show that the designation of a woman as living in her father's house is used both for the wife of an errēbu-husband and for one who has left her husband's home and returned to her father. In either case it may be assumed that she is now in her father's power, and the laws merely limit the implications of this fact.

15 So Driver and Miles translate (op. cit. in loc.).
OTHER METHODS FOR SECURING A SON

Over and above all these ways of avoiding the misfortune of having no son, by far the most common procedure in the ancient Near East was adoption. This might, in fact, be combined with errēbu-marriage; indeed, David raises the question whether the adoption of the husband by his father-in-law was not a necessary element in marriages of this type. Among the Babylonians monogamy prevailed, and therefore childless marriages were not uncommon. There was thus more occasion for adoption than there was among the polygamous Israelites. The customs and laws connected with adoption were far too numerous and elaborate to be discussed here.

The methods thus far mentioned were available while the husband lived. If in spite of all these possibilities a man died without leaving a son and heir, some other device had to be used. One possibility was to allow the daughter to inherit the estate, with the provision that she must marry a near relative of her father in order to keep the property in the family. This procedure was ultimately sanctioned by Hebrew law (Numbers 36:1 f., 5 f.). Koschaker regards this passage as an effort to reconcile the daughter's right of inheritance, after it had come to be recognized, with the older idea that the daughter herself was inherited by the nearest male relative. The combination of adoption and errēbu-marriage in Mesopotamia was another way of securing a succession through the daughter. It did not, however, like the Hebrew practice, prevent the later transfer of the property to another family by inheritance from the husband.

The prevalence of adoption among the Babylonians and other peoples of western Asia made unnecessary any such practice as levirate marriage of the Hebrew type. Among other peoples, however, customs of this sort are to be found. A closely related institution is the Greek practice of epiklerate marriage. The daughter of a man who had died without a son was inherited by his nearest relative, and the son of this union was reckoned as the child of his mother's father. This custom may be characterized as a kind of errēbu-marriage after the death of the wife's father, with the important difference that the husband in this case is not an outsider but a close relative, as in the Hebrew practice just discussed. Another means of providing a son for a man who had died was the Late Persian satar-marriage, the marriage of a female slave belonging to the dead man. This was done only when the deceased had left neither son nor widow.

LEVIRATE MARRIAGE TO SECURE A SON FOR THE DEAD

Levirate marriage, i.e., brother-in-law marriage, as a means of securing a son for the departed husband was by no means unknown among other peoples than the Hebrews. A close parallel to the Hebrew levirate is the custom of the niyoga in India. This, however, was not a real marriage

20 "Die Eheformen bei den Indogermanen" (Deutsche Landesreferate zum II. Internationalen Kongress für Rechtsvergleichung im Haag, 1937, pp. 77 ff.), p. 107 n.
21 Ibid., p. 107.
22 Ibid., p. 105.
23 Laws of Manu, §§ 59 ff. (Sacred Books of the East, xxv, 337 ff.); Westermarck, History of Human Marriage, iii. 216; Mittelmann, Das altisraelitische Levirat, 10 ff.
but a temporary union. When its end had been accomplished, further relations between the widow and her brother-in-law were prohibited. The čakar-marriage of the Persians and Parsees is more like the Israelite custom. In this case half of the children of the new marriage are counted as belonging to the first husband, though the second husband may make them his own by adoption. The reservation of some of the children for the former husband, Koschaker claims, implies that in the new marriage the wife does not become a member of the husband's family or come under his authority, but remains a member of the family to which she already belongs, which in this case is that of her first husband. For the possibility of the new husband's adopting the children Koschaker finds a partial parallel in § 28 of the Assyrian laws, which stipulates that when an almattu who has a son marries again, the son does not become the heir of his stepfather unless the latter adopts him.

Institutions and customs similar to the niyoga and čakar marriage are found also among many other peoples. Such parallels, however, take us too far from home to be significant for the interpretation of the Hebrew levirate. There is good reason to believe that the Israelite institution was connected with a much more closely related practice, being more or less directly based upon Canaanite custom. In this connection Professor Albright has kindly called my attention to the significant fact that in the poetic texts from Ras Shamrah a standing epithet for the goddess Anat is ybmt limm. The second element in this title is the plural of the word ilm, the equivalent of the Hebrew Ip‘om. As for the word ybmt, Virolleaud, noting that this was the same word which in Hebrew appears as ybāmāh with the meaning “sister-in-law,” at first so translated it in the Ras Shamrah texts. Later he adopted the rendering “protectress of the peoples,” remarking that the title was probably connected with the unknown primary meaning of the root, but that it might be interpreted on the analogy of the Sumerian SEŠ-KI, “brother (i.e. protector) of the earth.”

Albright, in a letter to the writer, traces ybmt to the root wbm and connects this with the biliteral word bamatu, meaning “back” in Canaanite and “loins” in Accadian. From the analogy of words with similar meanings in other Semitic languages Albright infers that this root and its derivatives denote or connote the idea of procreation, and that ybmt therefore means “progenitress.” The epithet ybmt limm thus means “progenitress of the peoples,” and is comparable to the Accadian bānāt tēnīšēti, “progenitress of mankind.” If this be so, it may be that in Hebrew also

25 V. i. 10. 27 See the article referred to above, n. 1.
28 More or less completely preserved, and with some variation, this title occurs in AB I. i. 3; AB II. ii. 15; AB IV. i. 14 f.; iii. 3 f.; AB V. B 33, C 9, D 66; Danel II. vi. 19, 25. (For most of these references I am indebted to Professor Albright.)
29 Virolleaud points out that in AB IV. i. 8 f. ilm occurs in parallelism with dšy, as in Is. 60: 2 (Syria XVII. 151); in AB V. B 7 f. its parallel is dšm, as in Is. 43: 4 (Syria XVIII. 89).
30 So still in the glossary of La légende de Danel.
31 Syria XVII. 151 f.
32 This, of course, is the Hebrew bāmāh. For its use in Ugaritic cf. AB I. vii. 34; AB I*. vi. 22; AB II. iv. 14 f.; AB V. B 13; Danel I. 17, 59, 60. Torczyner explains its use in Hebrew by the basic meaning “body” (Bulletin of the Jewish Palestine Exploration Society, 1933, pp. 9-18).
the words yābām and yēbāmāh meant originally "progenitor" and "progenitress," and came to mean "brother-in-law" and "sister-in-law" because of the fact that these were the parties in the yibbūm, the levirate marriage. The use of the verb yābām in Deuteronomy 25:7 is noteworthy in this connection. An important inference which may be drawn from these facts, if facts they be, is that the practice of levirate marriage among the Canaanites, as among the Israelites, was primarily a means of getting a son and heir. Only new sources, definitely attesting the practice of levirate marriage among the Canaanites and clearly showing its purpose, could establish the truth of this hypothesis or disprove it.

OTHER REASONS FOR LEVIRATE MARRIAGE

Levirate marriage was not always, however, practised for this purpose. As other means were employed to secure that end, so too this custom was observed for other reasons. Many considerations favor keeping a widow in her husband's family. In various ways the care of her husband's children, the administration of his property, and the value of the woman's labor may make this advisable. The necessity of making some provision for her support may enter into the situation also. The obvious way to meet all these needs is marriage with another member of the family, and since marriage within her own generation is more natural than marriage to one much older or much younger than herself, it is not surprising to find that among many peoples widows are frequently if not regularly married by their former husbands' brothers. For similar reasons sororate marriage, the marriage of a widower and a sister of his deceased wife, is equally common.

This is true of the ancient Near East as of other times and regions. No established custom of levirate marriage, to be sure, is clearly attested among the Babylonians, though Koschaker alludes to an unpublished Sumerian inscription which he regards as implying that a widow and her children were taken by her husbands' brothers. The fundamental principle governing the remarriage of widows, as also marriage in general, was the primacy of the family over the individual and the vesting of authority over all its members in the head of the family. Belonging to a family meant being subject to its head. A woman who married was therefore, except in errēbu-marriage, transferred from her father's family to that of her husband, and so came under his authority or that of the head of his family. Where the husband was still under his father's power, the legal form of the transaction in the ancient Near East was the adoption of the bride by the bridegroom's father "as daughter-in-law" or "for daughter-in-law-ship." At her husband's death her connection with his family did not cease; his authority over her passed to some other member of the family. That this would frequently, though not always, involve marriage goes without saying.

83 For considerations pointing in the opposite direction see the article referred to in note 1.
87 David, op. cit. (v. s., n. 10), p. 5.
88 Basis of Israelite Marriage, p. 23, with references.
The inheritance of the widow

Such a transfer of authority obviously resembles the inheritance of property, and the heir of the estate would almost inevitably be the one to whom the power over the widow was conveyed. It is therefore not surprising that Koschaker and others regard levirate marriage as merely a phase of inheritance, especially when marriage itself is regarded as a form of ownership. In speaking of marriage as ownership and levirate marriage as inheritance Koschaker does not mean that the wife is her husband’s property in exactly the same sense that a slave or an animal is his property. Both the terminology used in connection with marriage and the actual position of the wife show that this was not the case in any of the ancient civilizations with which we are acquainted.39 The ancient conception of ownership, however, was that of certain rights in an object, and these rights were defined according to the particular purpose for which they existed. The ownership of a piece of land, for example, might mean merely the right to grow crops on it, not an unlimited right to use it or dispose of it at will. The husband’s “ownership” of his wife was determined by the wife’s place and function in the family. Beyond this, and what was involved in it, the husband’s power did not go. He could not, for example, sell his wife to another man or put her to death, though he could divorce her if she did not fulfil a wife’s function for him. In other words, his power or authority over her differed from his ownership of a slave or an animal in accordance with its particular purpose, which was primarily to continue his life and the life of his family by providing for him at least one legitimate heir.40

The powers of the husband and the father

At this point it is important to observe another distinction. The special power of the husband over his wife, whether we call it ownership or authority, is obviously somewhat different from the authority which her father had held before her marriage. When she entered her husband’s family he might receive not only the special rights of the husband but also the general authority of the head of the family, acquired from the girl’s father. On the other hand, if the husband’s father or elder brother was the head of the family, there might be a division of authority between the husband and the father-in-law or brother-in-law. Self-evident as this distinction is, it is not always given sufficient importance in discussions of ancient marriage.

The difference appears clearly in the old Arab custom recorded by Tabařī.41 Commenting on a passage in the Qurān which forbids inheriting wives against their will, Tabařī remarks that in the days of ignorance, when a man died and left a widow, his heir (whether father, brother, or son) might come and throw his garment upon her. After thus formally asserting his authority he might either take her as his own wife by virtue of the māhr which the dead man had paid for her, or give her in marriage to another man and receive a māhr from him. If the woman, however, re-

39 Ibid., pp. 32-6.
40 Koschaker, op. cit. (v. s., n. 20), pp. 80 f., 95-9, 117 f.
41 W. R. Smith, Kinship and Marriage in Early Arabia, 2nd ed., p. 104.
turned to her own people before the heir performed this rite, he had no claim upon her.

Clearly what the heir here received, if the widow did not return to her own family, was the right as head of the family to dispose of her in marriage. So long as there was no "forbidden degree" of relationship between the widow and the heir, his right to convey her to a husband included the right to marry her himself if he chose to do so. Apparently the Arabs did not regard the relationship of father-in-law, brother-in-law, or stepson as such an impediment to marriage. If the heir were the woman's own son, of course, marriage between them would be precluded as incest, but there would be nothing to prevent the son, as hereditary head of the family, from receiving the right to dispose of his mother's hand if she were still of marriageable age. In any case the power of the father, father-in-law, husband, brother-in-law, stepson, or son, as the case might be, would include the right to make use of the woman's services as a worker, and also the responsibility of providing a home for her.

**CLAN AND FAMILY**

Still another distinction must be kept in mind. On the earlier stages of social development the large patriarchal family or clan was the primary unit, and authority over women taken into the group as wives, as over men and women born into it, belonged to the patriarch or sheikh. With the emergence of the small family of man, wife, and children as a distinct social unit, the husband's authority more or less superseded that of the patriarch over the wife and children as well as the property. Thus Koschaker holds that levirate marriage was in the first place a part of the older system of inheritance, by which the headship of the family belonged to the eldest member. As often as not this would be a brother of the one who preceded him. Only when there was no surviving brother, or he was younger than one of his nephews, would the succession pass to a member of the next generation. In accord with this system, Koschaker points out, we find that in India and Madagascar levirate marriage with a younger brother of the deceased husband is known, but not with an older brother, because only when the oldest brother dies is there a change in the headship of the family.42

When the smaller unit became more prominent, so that the headship of the family and other hereditary rights passed from father to son, it would be the son who normally inherited the authority over his mother. Marriage would then, as we have seen, be out of the question. When there was no son, however, the husband's brother would be next in line as heir, and there would be nothing to prevent him from marrying the widow himself. In this way Koschaker explains the limitation of levirate marriage to cases in which there was no son.43

This hypothesis has one important implication. If the brother-in-law as the heir received his brother's widow, there was no need for him to provide another heir by regarding his son by this marriage as the son of the former husband. That would be necessary only if the brother-in-law himself could not take the place of a son as heir, but in that case he could

not inherit the widow. The special purpose of Hebrew levirate marriage, therefore, requires another explanation. Aware of this difficulty, Koschaker remarks that levirate marriage of the Hebrew type presupposes the establishment of the small family as the primary social group, involving the necessity of continuing this family by direct succession from father to son. While a man lived, he would naturally use any available means to provide for this necessity, e.g. through the marriage of his daughter. Thus erēḇū-marriage would probably arise earlier than the Hebrew form of levirate marriage. When a man had died without having secured a son in any way, leaving the inheritance to his brother, the latter’s interest would hardly dispose him to provide another heir and shut himself out of the inheritance. Even so he might be compelled by law or public opinion to act counter to his own interest, with perhaps an appeal to some other and compensating motive. Such a situation, we may observe, would explain the necessity of such a ceremony as is described in Deuteronomy 25: 9-10, by which the brother-in-law who refused to enter into a levirate marriage was subjected to public disgrace. The conflict of interests between such a marriage and the right of inheritance may also explain the refusal of the nearest kinsman to marry Ruth, lest he mar his own inheritance, though the matter is here complicated by the fact that the kinsman appears not as heir but as redeemer.

**Laws Regarding the Remarriage of Widows: The *almattu***

With these general and more or less theoretical considerations in mind, we may now proceed to examine the actual provisions of ancient Oriental law as regards the remarriage of widows. In so doing we must distinguish several types or degrees of widowhood. From the point of view of ancient law a woman is not regarded as a widow in the strictest sense, and is not called an *almattu* (Hebrew ‘almônāh), except when her father-in-law is dead and she has no grown son, i.e. when there is nobody who has any authority over her or responsibility for her support. In laws regarding the *almattu* no mention is made of her own father. Evidently it is assumed that if he is alive she has left his family, and he has no longer any power or responsibility with regard to her. Her husband’s brothers also do not come into the picture. Whether it is assumed that she has no brothers-in-law is not certain but may be regarded as probable.

The *almattu* is referred to only once in the Code of Hammurabi (§ 177). Here it is stipulated that if she has minor sons she may not remarry except with the permission of the judges; she then administers her deceased husband’s estate jointly with her new husband in behalf of her sons, and cannot sell any of it. The Assyrian laws (§ 28) provide that when an *almattu* with a minor son marries again, and the son grows up in his stepfather’s house, he shall be the heir of his own father but not of his stepfather, unless the latter adopts him. According to § 34 an *almattu* may become a man’s wife by living with him for two years. The property

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45 Ruth 4: 6. I hope to discuss this matter elsewhere.
47 V. i., pp. 12 f., on § 33 of the Assyrian laws.
of an almattu who enters a man's house becomes his, whereas his property becomes hers if he comes into her house (§ 35). When a woman's husband is captured by the enemy she must wait two years for him, as we have seen, but after that period, if she has no father-in-law or son, the judges must give her a certificate as an almattu, and she may then freely marry again (§ 45).

The "woman whose husband is dead"

When the widow has a grown son or her father-in-law is living, she is not called an almattu but simply "a woman whose husband is dead." In such a case her eldest son or stepson would naturally, as heir, receive the authority over her, and this appears to have been the case. The Code of Hammurabi (§§ 171-2) provides that the woman may remain in her husband's house, retaining her šeriqtu (dowry) and nuďunnā (the husband's wedding gift), or if she has never received a nuďunnā she may receive a son's share of the estate. If she wishes to "go out" and remarry, however, she may keep the šeriqtu which she brought from her father's house, but must leave her husband's nuďunnā with his sons. Apparently such freedom was not always allowed in the ancient East: in a tablet from Nuzu a father instructs his sons, in case their mother wishes to remarry after his death, to drive her naked from the house as an adulteress.

The Assyrian laws contain no statement that the widow who has sons or stepsons may remarry, but this is implied by the provision of § 46 that if she does not "go out" from her husband's house, and he has made no provision for her support, his sons must support her. If she is a second wife and has no sons of her own, the sons of the first wife must take care of her, giving her a contract to this effect "like a bride whom they love." If she has sons, and the first wife's sons do not wish to support her, her own sons must do so, and she must work for them. One of her stepsons, however, if he chooses, may "take" (i.e. marry) her and assume full responsibility for her support. What happens if the husband has left no sons at all is not here stated, but presumably her father-in-law, if still living, would have authority over her and be responsible for her. As we shall see presently, provisions resembling these are made in § 33 with regard to the widow who is living in her father's house.

The widow living in her father's house

The laws dealing with the widow living in her father's house constitute a special group with problems of its own. The most important of these is the question already raised, whether the statement that a woman is living in her father's house implies that her marriage was one of the errēbu-type. We have discussed the laws regarding cases in which the husband is still alive, and have seen that errēbu-marriage seems to be frequently, though not always, indicated. The laws of this type which are concerned with widows (§§ 25, 26, 30, 33) must now be considered. The subject of §§ 25 and 26 is the disposition to be made of the ornaments received by the wife

48 Driver and Miles, op. cit., p. 212.
49 Basis of Israelite Marriage, pp. 42 ff., 47 f.
50 C. H. Gordon, Zeitschrift für die Alttestamentliche Wissenschaft, 1936, pp. 277 f.
from her husband. According to § 25, when she has no son, and the estate belonging to her husband and his brothers has not been divided, the ornaments are regarded as family property and received by the brothers. According to § 26 the ornaments go to the husband's sons if there are any; otherwise the woman retains them herself. The apparent contradiction between these two sections may be resolved, as Driver and Miles show, by assuming that § 26 presupposes a previous division of the family estate, the husband having received his share, so that his property now falls to his sons instead of his brothers. No possibility of marriage between the widow and one of her brothers-in-law is here suggested. There is nothing to show whether or not *erēbu*-marriage is referred to.

Section 30 is very difficult. It states that a widow living in her father's house may be given by her father-in-law to another of his sons, even though he has already acquired by gift another bride for this second son, provided she has not actually been given to him. The bride thus deprived of her husband may in turn be given to a third son of the father-in-law, or he may demand the return of the gift he gave for her. Her father has no option in the matter. Why the widow is not given to the third son and the second son allowed to marry the bride already acquired for him is something of a mystery. Possibly this was a matter of their relative ages.

If in this case the marriage of the dead son was an *erēbu*-marriage, as suggested by the statement that his widow is living in her father's house, how is it that her father-in-law has any power over her? Koschaker cuts the Gordian knot by maintaining that the lines referring to the dead son and his widow have been interpolated in the original law. ⁵¹ Their removal undoubtedly simplifies the law, but the train of thought by which Koschaker endeavors to account for the interpolation is too involved to be wholly plausible. Driver and Miles hold that the dead man's marriage must have been incomplete or 'inchoate.' ⁵² Their arguments, however, are rather forced. It seems clear that this law envisages a real case of levirate marriage. The son's death leaves his widow to be provided for by someone. She is living in her father's house, but apparently, for a reason to be discussed presently, he is not responsible for her support. Whether she has a son or not is not stated; if so he is presumably not grown. Since it seems entirely unlikely that in an *erēbu*-marriage the wife's father-in-law would have any claim on her or responsibility for her support, we must suppose that the wife had returned to her paternal home, either before or after her husband's death. In that case the statement that the widow is living in her father's house must indicate, as in § 32, that this law is designed to confirm the right of the father-in-law even when the widow has attempted to escape from his power by returning to her father's house. In other words, Assyrian law did not give the widow the privilege recognized by the Arabs. If our interpretation of this law is correct, the statement that a wife or widow is living in her father's house does not always indicate *erēbu*-marriage.

Section 33 also is obscure. In this case the text is in bad condition.

⁵¹ *Zeitschrift für Assyriologie*, xli, pp. 86 f.
⁵² *Middle Assyrian Laws*, pp. 167, 176 ff. (Driver and Miles use the term 'inchoate marriage' for the stage in which the marriage-transaction is legally complete, but the bride has not actually been given to her husband.)
Driver and Miles propose a reconstruction which is thoroughly plausible as far as it goes and not without some basis in the words and fragments of words which can be read with more or less certainty. If it is at least approximately correct, four possible situations are here recognized: (1) the husband has left at least one son; (2) there are no sons, but the husband is survived by brothers as well as his father; (3) there are no sons or brothers, but the father-in-law is living; (4) the widow has no sons, brothers-in-law, or father-in-law. To be sure, the last clause, which is well preserved, does not state that there are no brothers-in-law, but only that both husband and father-in-law are dead and there are no sons. It must be assumed, however, that here too there are no brothers—even lawyers cannot always think of everything.

In the first case the widow is to live with her husband’s sons. In the second case a levirate marriage is apparently permitted, as in § 30: the father-in-law may give the widow to one of his other sons. The third case is represented only by a gap of three lines in the text, which Driver and Miles do not attempt to restore, followed by the clause, “or if he pleases, to her father-in-law as spouse he shall give her.” The subject of this clause must surely be the woman’s own father. Why she is not already in the power of her father-in-law is a mystery, unless her marriage was one of the errēbu-type. In that case, however, the authority accorded to the father-in-law in the second case becomes mysterious. There must be some significance in the fact that the clause allowing the woman’s father to give her to her father-in-law is preceded by the condition, “or if he pleases.” This suggests that the missing portion of the text just preceding it allowed the father the option of retaining his daughter in his own household if he so desired. In other words, the wife’s father even in an errēbu-marriage had no responsibility for her support when her husband died, leaving no sons, but might either keep her at home or give her to her father-in-law.

In that case the permission granted to the father-in-law to give the widow to one of his other sons, in the second set of circumstances, may have been similarly conditioned upon her father’s consent. The assumption of Driver and Miles that the father-in-law had adopted the widow as daughter-in-law is thus unnecessary. But if that be so, a levirate marriage was allowed even though the original ‘inchoate’ marriage had been an errēbu-marriage. Some interpreters, to be sure, suppose that this law excluded levirate marriage when there was no son. Koschaker, who holds this view, suggests that perhaps the brothers-in-law had no claim on the widow because her marriage had been of the errēbu-type. It must be admitted that the incomplete state of the text makes any interpretation questionable, but Driver and Miles make a strong case for the view that the widow might be given to one of her brothers-in-law when she had no sons or stepsons.

53 Ibid., p. 229.
54 In § 43, lines 33 f., when the bridegroom has died before the completion of the marriage and the father-in-law is dead, but there are grandsons less than ten years old, the bride’s father is authorized to give her to one of the grandsons or return the marriage-gift (v. i., p. 14).
55 The writer must leave to the Assyriologists the task of reconstructing this part of the text, if his conjecture seems to them probable.
The Hittite code contains a law which may be mentioned here (§ 193). It allows the marriage of a widow to her husband’s brother, father, and paternal uncle in turn. Since nothing is said of a son of the deceased husband, this law probably applied only to childless widows. Koschaker gives an elaborate but convincing argument to this effect, with the further postulate that § 192 originally sanctioned the inheritance of the widow by her son or stepson.\(^58\) How far this law may be due to Semitic influence, if at all, we cannot say, but it corresponds to the conceptions and practices we have considered.

**The Bride Not Given to Her Husband**

Still another group of laws in the Assyrian code deals with girls who have been acquired as brides but not given to their bridegrooms. In § 43 we find a situation resembling that presented by §§ 30 and 33.\(^59\) David holds that this law reflects levirate marriage,\(^60\) but while it is true that the opening lines show the wedding had taken place, the statement that the bride had been “assigned”\(^61\) to the man who died or disappeared seems to imply that she had not actually been given to him, i.e., that the marriage was what Driver and Miles call an ‘inchoate’ one. The law states that if a man has acquired a girl as bride for one of his sons, and the son dies or disappears, the father may give her to any of his other sons who is at least ten years old. This recalls one of the Nuzu tablets,\(^62\) which records a man’s acquisition of a bride for one of his sons, with the express stipulation that if the son dies the woman is to be given to another son. C. H. Gordon says of this case, “This is levirate marriage in its crudest form.”\(^63\) The transaction is made in the form of adoption “as daughter-in-law” or “for daughter-in-law.”\(^64\) In the same way the Assyrian law evidently implies that the bride had passed from her father’s authority to the authority of the man who wished to give her as wife to one of his sons, so that she now belonged to his family and was obliged to take a place in it as the wife of one of its members. The law goes on to state that in case the bridegroom’s father is dead when the young man dies or disappears, a son of the bridegroom not less than ten years old, if there is one, shall take the bride. If there are sons, but none of the requisite age, the girl’s father may either give his daughter to one of them or return the gifts he received for her. The bride’s position is thus quite clear, and quite in accord with the practice of adoption “for daughter-in-law-ship.” Only in case there is no surviving male member of the bridegroom’s family of marriageable age may her father recover her, and then only by returning the gifts for which she had been conveyed to her would-be father-in-law. To whom the gifts are to be returned is not stated, but they would doubtless belong to the minor sons of the departed bridegroom or to the next in the line of inheritance.

\(^{58}\) *Revue Hittite et Asianique*, 1933, p. 88.

\(^{59}\) It may be that, as Driver and Miles maintain (op. cit., p. 173), §§ 30-31 refer to plebeian marriage and §§ 42-3 to patrician marriage, but this has no particular significance for our present purpose.

\(^{60}\) Op. cit. (v. s., n. 10), notes 14 and 78.

\(^{61}\) u-di-šu-ni; compare the use of ya’dad in Exodus 21: 8 f. (Basis of Israelite Marriage, 22 n.).

\(^{62}\) *Chiera, Mixed Texts* (Publications of the Baghdad School, V), No. 441.


\(^{64}\) V. s., note 38.
Closely related to this type of relationship is the kind of sororate marriage described in § 31 of the Assyrian laws. According to this law, if a bride for whom the marriage-gift has been given, sealing the wedding-contract, dies before being given to her bridegroom, the latter may either marry another daughter of his father-in-law or demand the return of the marriage-gift. The former alternative, however, is qualified by the clause, "if his father-in-law pleases." Koschaker 65 and apparently Driver and Miles 66 regard this as an interpolation which nullifies the bridegroom’s right, but it is quite possible that the original intention was to leave the choice between the alternative methods of settlement to the father of the bride.67 In other words, the bride’s father was required to give some adequate compensation for the girl who had died, but was allowed to choose in which of two possible ways he would do this.68 There is no need to resort to Koschaker’s suggestion 69 that the younger sister may have been already in the bridegroom’s power through having been adopted along with her sister to serve as a maid for the latter.

**Summary**

From all the facts cited it appears that normally the father’s authority over his daughter and his responsibility for her support passed to her husband, and from him to his sons, brothers, or father in the order stated. In this respect there appears to have been, in Assyrian law, no difference between the wife living in her father’s house and the wife who had gone to her husband’s home. This fact supports the conjecture that the Assyrian laws were meant in part to carry over to errēbu-marriage what was acknowledged custom in the other and more usual type of marriage.

In conclusion we may observe that, except among the Hebrews and perhaps the Canaanites, levirate marriage was not in the ancient Near East a means of securing a son for the dead. It was rather a part of the whole system of family relationships, authority, and inheritance. At the same time, the object sought by the Hebrews through levirate marriage was sought by other peoples also, but in different ways.

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**OF SHOES AND SHEKELS**

(I Samuel 12: 3; 13: 21)

E. A. SPEISER

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Shoes were used in the Ancient Orient not only as an article of dress but also for symbolic purposes. One of these was plainly of a legal nature.

65 *Zeitschr. für Assyriologie* xii, p. 23.  
67 Taking *ib-ba-az* to mean “he shall marry” rather than “he may marry” and assuming that *ba-di-ma* in both instances refers to the girl’s father. [In my judgment Professor Burrows has adopted the only interpretation of *ibbas* and of *hadi-ma* emu . . . *u badi-ma* which is both logically and syntactically possible.—W. F. A.]  
68 Compare Laban’s assumption of the right to substitute one daughter for another (Gen. 29: 21-8). For other cases involving similar conceptions see *Basis of Israelite Marriage*, pp. 25 f.  
69 *Loc. cit.* (v. s., note 65).