

## 7 Marriage between equals

We cannot get away from the impression that the woman contributed little at the payment of the bride-price. She was more or less the object of the transactions. However, we do know of a number of contracts concerning marriage which show the woman more actively involved. One woman who married a priest contributed nineteen shekels of silver herself, according to a contract drawn up in Sumerian. The fine to be applied if either party should take the initiative to divorce was to be the same.

If in the future E. should say to A., his wife, 'You are not my wife', then he shall give back the nineteen shekels of silver and pay thirty shekels of silver as divorce money. And if A. should say to E., her husband, 'You are not my husband', then she shall forfeit the nineteen shekels of silver and she shall pay thirty shekels of silver.<sup>1</sup>

Two characteristics have been cited to define a marriage on equal terms. One is that there is no statement about paying a bride-price and the other is that the same conditions apply to both parties in the case of divorce. We will return to this question in Chapter 9, about divorce. Here it is sufficient to state that any woman who, after the bride-price had been paid and in normal, balanced circumstances, dared to say to her husband, 'You are not (any longer) my husband', would be threatened with the death penalty.

A marriage where the woman is under the authority of the man has been described as a marriage with *manus*. The term *manus* and the associated legal practice are found in the Institutes of Gaius (I 108–113) as a feature of early Roman law. Concerning Babylonian practice P. Koschaker distinguished between marriages with *manus* and those without *manus*. He used the term *Muntehe*, which means literally 'coin-marriage' and is a concept in Medieval German law.<sup>2</sup> Most Babylonian marriage contracts and laws concerning marriage certainly suggest that this was the usual practice, where a contract to marry was similar to a contract for sale. While Koschaker admits that there is some overlap between both forms of marriage, his critics say they cannot be differentiated, except that different attitudes to divorce are evident.<sup>3</sup> We call it a 'marriage with parity' when both man and wife have equal rights. Koschaker also refers to *muntfreie Ehe*, 'marriage without coins', a form well attested among the Assyrians (in the Old, Middle and

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<sup>1</sup> BE 6/2 40 with C. Locher, *Die Ehre einer Frau in Israel* (1986) 248 f.

<sup>2</sup> R. Westbrook, 'Muntehe', *RIA VIII/5–6* (1995) 425 f.

<sup>3</sup> Westbrook, *OBML*, 79 f.; O. R. Gurney, *Studies F. R. Kraus* (1982) 94.

Neo-Assyrian periods) and also in Syria (in Alalāḥ and Emar).<sup>4</sup> E. Lipinski sees this as a West Semitic tradition, which is to be traced back to earlier practices in Alalāḥ and Ḥana and which to some extent also had influence in Egypt.<sup>5</sup> Again this is a subject to which we will return later, when discussing divorce. In these cases the man was forbidden to take a second wife without some compelling reason. If this should happen, then the second wife would have to be the ‘slave-girl’ of the first wife, a situation we saw pertaining in Chapter 5 concerning the second wife.

Parity in marriage may not necessarily have been codified in traditional law, but everything depended on the social position of the woman. We see women belonging to the upper echelons of society, for example, in the Old Assyrian merchant colony, where wives took an active part in business administration.<sup>6</sup> One marriage between two Anatolians, Z. and K. was subject to unique conditions:

The house belongs to both of them. Whether they become poor, or whether they become rich, it is theirs in common. If Z. leaves K., they shall both divide the house. When they die, H. and P. will receive the house’.<sup>7</sup>

Such parity is comparable to usual present-day conditions of marriage. Those marriages seem to have been between rich families where certain financial interests were pertinent. J. Paradise has correctly divided into two categories the marriage contracts from Nuzi. In some the family of the bride took the initiative, and in others this fell to the family of the groom. Each guarded their own interests and provided their own clauses in the contract.<sup>8</sup> Paradise shows that the family of the woman could stipulate that the man could not take a second wife, provided his wife appeared to be fertile. If there were no children, then the woman could not be demoted to the level of a concubine. The children born to the woman had to inherit, even if there were children by another woman. In fact there are only three contracts from Nuzi in which the family of the man laid down the conditions, but they say nothing about the birth of children.

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<sup>4</sup> Locher, 197; C. Niedorf, *Die mittelbabylonischen Rechtsurkunden aus Alalāḥ (Schicht IV)* (2008) 161, 167, 169.

<sup>5</sup> Locher, 276 f.

<sup>6</sup> K. R. Veenhof, *Iraq* 39 (1977) 113; idem, in: H. J. Nissen, J. Renger, *Mesopotamien und seine Nachbargebiete I* (1982) 152, showing that it is found also in marriages with Anatolian women.

<sup>7</sup> KTS II 6 = AKT I 21, with C. Michel in: K. R. Veenhof, *Houses and households* (1996) 292; Michel in F. Briquel-Chatonnet, *Femmes* (2009) 256 n. 11.

<sup>8</sup> JCS 39 (1987) 1–36.

Much criticism has been levied against Koschaker's distinction between marriage with *manus* and marriage without. One mistake to be avoided in this criticism is to think that in a marriage without *manus*, the woman would continue to live in the house of her father.<sup>9</sup> Even so, it has to be admitted that two forms of marriage are attested. They are possibly separated geographically, with the Sumerian south being more liberal than the Akkadian north, and the more severe 'northern' form eventually disappearing.<sup>10</sup> An early Middle Assyrian marriage contract is an example of such a marriage:

Š. (...) and B. (...) have by mutual agreement spoken together of marriage. Š. (is) her husband and B. (is) his wife. In the country and in the city they will 'fear' [= care for] each other. If Š. should say, 'You are not my wife', then he shall pay thirty shekels of silver; and if B. should say, 'You are not my husband', she shall pay thirty shekels of silver (followed by the names of five witnesses and the date).<sup>11</sup>

C. Saporetti assumes that the woman here was an independent widow.<sup>12</sup> Such financial parity is referred to in the Middle Assyrian laws (§ 35). The phrase 'in the country and in the city' refers to the countryside and the city of Assur, and is reminiscent of the phrase 'in the field and in the city' in Old Assyrian marriage contracts, which distinguishes the land of Anatolia from the city of Assur.<sup>13</sup> A 'holy woman' in Emar organised a marriage for her daughter(s), and there the fine stipulated for either party in case of divorce was sixty shekels of silver.<sup>14</sup>

A woman enjoying complete freedom is nicely illustrated in an Assyrian contract from ca. 650 BC.<sup>15</sup> A mother was marrying off her daughter and a dowry was specified. If the man initiated divorce twice the amount of that dowry would have to be given back, but the woman could leave the man without any repercussions. This mother was not just one in a crowd, but a high-ranking lady of the court marrying off her daughter to an eminent official. The groom probably was the chief

<sup>9</sup> A. van Praag, *Droit matrimonial assyro-babylonien* (1945) 181; G. Cardascia, *Les lois assyriennes* (1969) 64. Koschaker made such a comment about § 33 of the Assyrian law-book.

<sup>10</sup> Westbrook, 79 f., 83 f. According to B. Lion this is confirmed by new texts; 'Divorces du nord et du sud', NABU 2001/97.

<sup>11</sup> TIM 4 45 with (among others) W. Röllig, WdO 5 (1969) 129 f.; see also K. R. Veenhof in: *Studies F.R. Kraus* (1982) 363 n. 4.

<sup>12</sup> C. Saporetti, *The status of women in the Middle Assyrian period* (1979) 14, 19.

<sup>13</sup> In ICK I 3 also 'country' vs. 'city' (*mātum* vs. *ālum*).

<sup>14</sup> Emar VI/3 no. 124.

<sup>15</sup> ND 2307 = Postgate, FNALD no. 14 = TUAT NF 1 (2004) 75–77 no. 6; see J. N. Postgate, Iraq 41 (1979) 97 f.; K. Radner, *Die neuassyrischen Privaturkunden* (1997) 159, 164–166; also R. Zadok, BASOR 230 (1978) 57 f.; S. Svärd, *Women and power in Neo-Assyrian palaces* (2015) 104 f., 164 f., 234 nos. 16–19 (with related texts).

tailor at the court. The high social status of both parties explains these special conditions.<sup>16</sup> In contrast we have contracts from the same period where brides were sold by their impoverished parents.

Amat-Aštarti, the governess (*šakintu*) of the New Palace of Calah, has given Šubetu, her daughter, to Milki-ramu, the son of Abdi-Azuzi. This is the dowry which she gave to her: [a long list of items of jewellery, clothing and household goods follows]. If Šubetu does not become pregnant (and) does not bear (a child), she shall take a slave-girl (and) put her as a substitute in her place. (In this way) she shall bring sons to the world; the sons are her sons. If she should love (the slave-girl), she shall shelter her. If she should hate (the slave-girl), she shall sell her. If Šubetu should hate Milki-ramu, she shall give up (the dowry). If Milki-ramu should hate his wife, he shall give double (the dowry) to her.<sup>17</sup>

At the end the names of seven witnesses are given and the date. Because the names of all three of the parties in this contract are Phoenician, R. Zadok has suggested that here Aramaic or Phoenician or Hebrew law is reflected rather than Assyrian law. Nevertheless, the stipulations about the slave-girl are reminiscent of those in an Old Assyrian contract.<sup>18</sup>

Two Neo-Assyrian marriage contracts state that the woman was not responsible for the debts of her husband. One possibly concerns a princess, but only these two clauses can be read:

If A. marries a woman in addition to her, she shall take all that she had acquired and go and leave. If A. should borrow silver, the woman has nothing to do with this.<sup>19</sup>

In a will from Old Babylonian Ḫana, in which a man assigns an inheritance to the children of his wife, the stipulations for divorce on terms of parity are clear. This particular will is often called a ‘marriage contract’ because it contains divorce clauses in it. In fact it is a will which established a person’s destiny (*šimtu*), according to the Akkadian term that was used. The document reads thus:

Kikkinu the son of Abaya during his life has ‘destined the destiny’ of Bitti-Dagan, his wife. Kikkinu is her husband; Bitti-Dagan is his wife. If Kikkinu, her husband, should say to Bitti-Dagan, his wife, ‘You are not my wife’, then he shall go empty out of his house; they shall bring (?) him to the cattle of the palace. And if Bitti-Dagan, his wife, should say to Kikkinu,

<sup>16</sup> There are four Neo-Assyrian examples of marriages between equal partners, ‘Eheschließungen zwischen gleichberechtigten Partnern’; see Radner, *Privatrechtsurkunden*, 165 f. (where A. 2527 = StAT 2 no. 164).

<sup>17</sup> J. N. Postgate, FNALD (1976) p. 106 f.

<sup>18</sup> ICK I 3 with H. Hirsch, Or. NS 35 (1966) 279 f.

<sup>19</sup> CTN II 247 with commentary by Postgate; K. Deller, NABU 1991/105; K. Radner, *Die neo-assyrischen Privatrechtsurkunden* (1997) 166.

her husband, 'You are not my husband', she shall go out naked; they shall put her upstairs in the upper story of the palace. The sons of Bitti-Dagan who she bears (or 'has borne') to Kikkinu, her husband, shall 'eat' a portion of the inheritance of the house of Kikkinu, her husband ...<sup>20</sup>

Only a few texts are known to have come from Ḫana (modern Deir ez-Zōr). This one is unique in that these penalty clauses are attested nowhere else. It has been suggested that the text is a model of a marriage with parity. But even though the marriage partners were of equal status, they still seem to have been dependent on the palace. The penalty on the husband is hardly to be taken literally, but rather to mean that he will carry out the chores. Some scholars suggest that the punishment for the woman was intended to be literally carried out, while others take the phrase to mean the she will be put on show. Perhaps there was a prejudice that the very request for divorce by the woman implied some suspicion of adultery, which is why she was exposed to ignominy.<sup>21</sup>

In the Neo-Babylonian period, marriage did not involve parity. A curious exception to this is to be found in a few Babylonian texts found at Susa in Persia, where the conditions for divorce are the same for both partners. But these concern marriage between Egyptians, and in Egypt marriage with parity was possible.<sup>22</sup>

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**20** BRM 4 52; cf. P. Koschaker, JCS 5 (1951) 118 f.; E. Lipinski, *Jewish Law Annual* 4 (1981) 17 f.; S. Lafont in: *Hommages à Romuald Szymankiewicz* (1998) 544–546.

**21** S. Lafont, *Femmes* (1999) 86, who follows Westbrook, 'Adultery'; see Chapter 10, note 1.

**22** M. T. Roth, *Babylonian marriage agreements* (1989) 14, 108–113 nos. 34–35; C. Wunsch, *Urkunden zum Ehe-, Vermögens- und Erbrecht aus verschiedenen neubabylonischen Archiven* (2003) 36 n. 3.