

## 31 The Middle Assyrian law-book about women

A collection of laws and regulations regarding women from the Middle Assyrian period deserves to be treated separately. This law-book consists of a series of clauses written on a well-preserved clay tablet. It was found beside a gate during the excavations on the city of Assur, which may have been the place where cases were examined and verdicts pronounced. The tablet is unfortunately damaged in parts. It is formatted with four columns on each side, and about a hundred lines in every column of finely written text (Figure 54).<sup>1</sup>

In about 1100 BC older ‘harem edicts’ had been collected by King Tiglath-Pileser I (see Chapter 24) and here also previous traditions about how the law applied to women have been deliberately assembled. This document could be taken as a tractate concerning women and the law, or what in German could be called a *Frauenspiegel*. But we do not find any abstract of principles to guide the law, which could not be expected from a Babylonian or Assyrian law-book. Rather the writers wished to put together the records of a number of different cases with the verdicts given at the time. Perhaps it was designed to concentrate people’s minds on the higher values of justice. Several particularly complex situations are described, so complex that special circumstances must have prevailed and dictated the verdict that was passed.<sup>2</sup>

Individual laws are separated from one another by a horizontal line on the clay tablet. To these sections a sequence of numbers has been given for ease of reference. The number of subjects covered is varied: theft (§§ 1–6); assault (§§ 7–11); sexual offences (§§ 12–24); marriage law (§§ 25–49); other criminal law (§§ 50–59). The text as it stands will have been compiled from older documents, as can be gauged from some aberrant writings and errors. Moreover, in referring to wedding gifts or payments in general we find inconsistent terminology.<sup>3</sup> All this points to different strata in the composition of the law-book. Common law, for which there

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**1** For a translation with commentary see G. Cardascia, *Les lois assyriennes* (1969); for later translations see R. Borger in: *Rechtbücher* (TUAT I/1) (1982) 80–92; M. T. Roth, *Law collections from Mesopotamia and Asia Minor* (1995) 153–194, and subsequently revised in: M. W. Chavalas, *Women in the Ancient Near East* (2014) 158–170. For a penetrating study on the purpose and character of this law-book see J. Bottéro in *Annuaire 1966/1967*, École pratique des Hautes Études. IVe section: Sciences historiques et philologiques, 81–110, cf. *Annuaire 1967/1968*, 89–104. For photos see J. Marzahn, B. Salje, *Wiedererstehendes Assur. 100 Jahre deutsche Ausgrabungen in Assyrien* (2003) 95; the catalogue *Babylon. Wahrheit* (2008) 212 Abb. 142; 224 Kat. 138. Each of the columns is 32 cm high.

**2** Bottéro, *Annuaire 1966/1967*, 84 f.

**3** Bottéro, 86 f. (§§ 30–31).

are parallels in Babylonia and Israel, general regulations and actual situations and verdicts will have been used as sources.<sup>4</sup> Textual analysis shows that the last part of the document (§§ 42–59) is really a supplement to the primary text (§§ 1–41) inasmuch as it randomly returns to themes raised earlier and expands them.

The translations given here are those of Martha T. Roth. I thank her most warmly for allowing me to reproduce here her admirable text. When reading it is important to note whether a singular or plural verb form is used when a punishment is described. A singular verb meant that an individual, the injured party, had the right to carry out the punishment himself, but a plural verb meant that it was the responsibility of the community to administer justice. Law-books tended to curtail the right of the injured party to act. The frequently used extravagant phrase that ‘they prove the charges (against him) and find (him) guilty’ seems to be nothing more than a form of words. Others think that it was a case requiring careful argumentation.<sup>5</sup> Some of the laws are discussed extensively elsewhere in this book.

The first sections of the law-book deal with crimes committed by women.

§ 1 is concerned with a woman who steals property from a temple, and it is the deity of the temple who decides her punishment.<sup>6</sup>

§ 1. If a woman, either a wife-of-a-man or a daughter-of-a-man, should enter into a temple and steal something from the sanctuary, and it is discovered in her possession or they prove the charges against her and find her guilty: [they shall perform (?)] a divination (?), they shall inquire of the deity; they shall treat her as the deity instructs them.

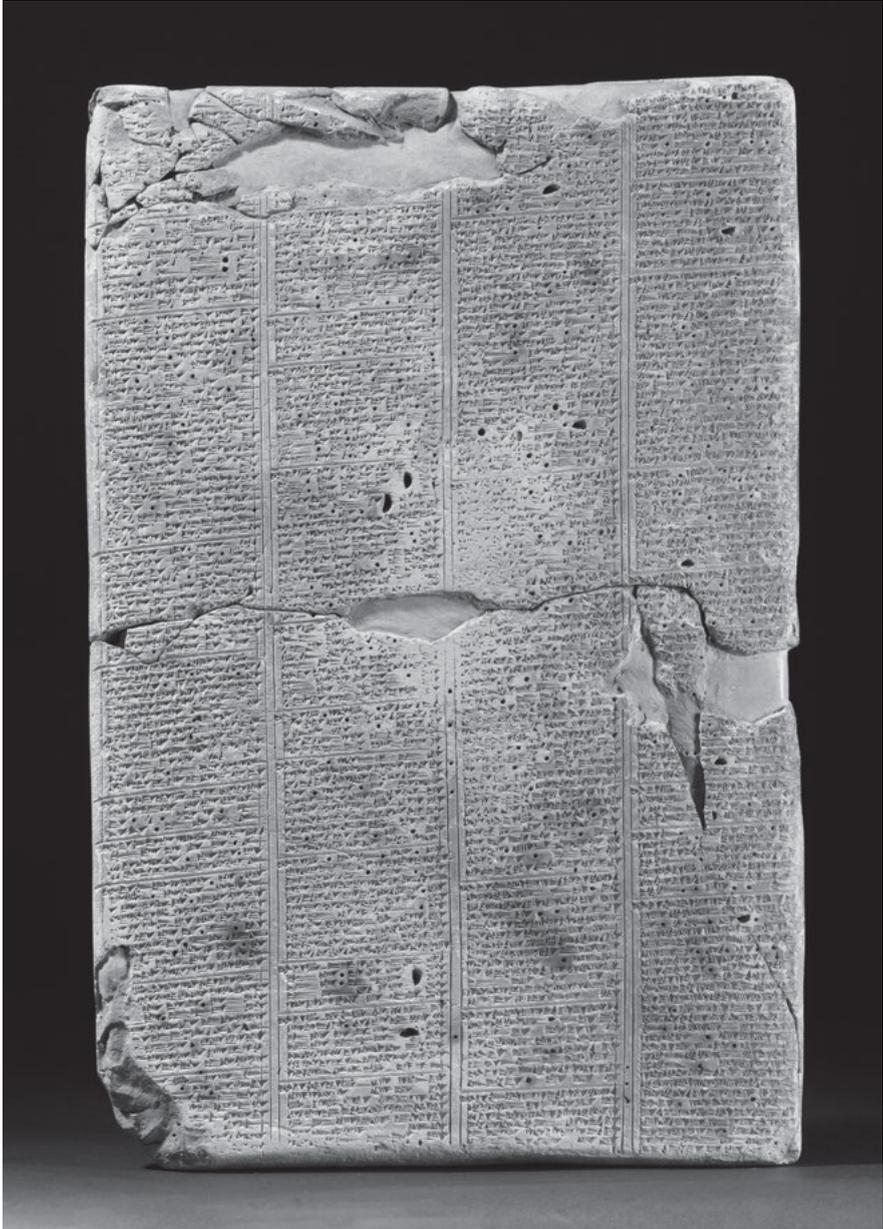
In § 2 the normal principle of a family being corporately involved with a crime is suspended for the case of a woman who acts insultingly. She alone will have to face punishment with no claim being made on any other members of her close family. This law may reflect the notion that the woman was subservient. In ancient law it is ‘a heinous injustice’ for an inferior person to insult someone superior (*inuria atrox*, Gaius, Institutes III 225).<sup>7</sup>

<sup>4</sup> Bottéro, 93–95.

<sup>5</sup> Bottéro, 94 f., 100; C. Locher, *Die Ehre einer Frau in Israel* (1986) 363 f.; S. Lafont, *Femmes*, 439 f. A revolutionary approach is found in R. Westbrook, ‘Evidentiary procedure in the Middle Assyrian laws’, JCS 55 (2003) 87–97, who states that the burden of proof is on the accuser who adduces evidence obtained rationally (with the verb *burru*) or supernaturally (with the verb *kunnu*).

<sup>6</sup> S. Lafont, *Femmes* (1999) 434–445, 475.

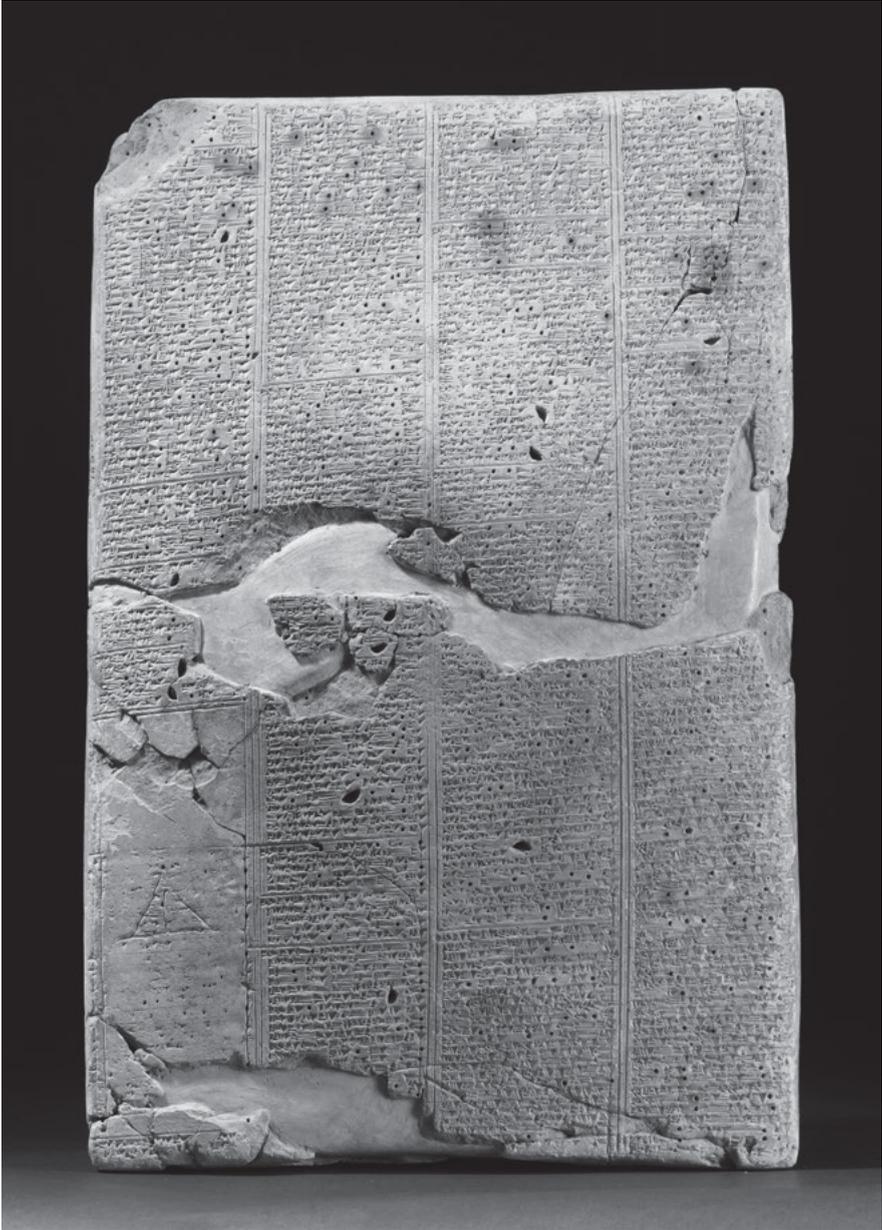
<sup>7</sup> Lafont, *Femmes*, 445–451, 475. According to her, ‘blasphemy’ means insulting the gods, but in practice how they did that is uncertain.



**Fig. 54:** The Middle Assyrian law-book Tablet A, the obverse and reverse sides.

Four columns on the obverse, with the first column on the left, and four columns on the reverse with the last column on the left. Rulings separate individual laws. Assur, 1100 BC. Fired clay. Height 32 cm.

*Vorderasiatisches Museum, Berlin*



§ 2. If a woman, either a wife-of-a-man or a daughter-of-a-man, should speak something disgraceful or utter a blasphemy: that woman bears responsibility for her offence; they shall have no claim against her husband, her sons, or her daughters.

Theft and receiving stolen goods was a well-known theme in law-books. § 3 prescribes the death penalty for a woman who steals goods belonging to her husband when he was indisposed or after his death, as well as for anyone to whom she passes them on. A lesser punishment is prescribed, but one identical for both parties, if her husband was in good health when the theft occurred. The innovation in this law (and in § 4) is that the punishment for the woman and the receiver of the stolen goods is equal.<sup>8</sup>

§ 3. If a man is ill or dead, and his wife should steal something from his house and give it either to a man or to a woman or to anyone else: they shall kill the wife of the man as well as the receivers (of the goods).

And if a wife-of-a-man, whose husband is healthy should steal from her husband's house and give it either to a man or to a woman or to anyone else: the man shall prove the charges against his wife and shall impose a punishment; furthermore, the receiver who received (the goods) from the wife of the man shall give (back) the stolen goods, and they shall impose a punishment on the receiver identical to that which the man imposed on his wife.

If the woman decides to pass on goods she has stolen to one of her slaves or slave-girls, § 4 shows that she can expect to have her ears cut off and the slave can expect to lose his or her nose as well as ears. But if the husband pardons his wife the slave will also be pardoned and what was stolen did not have to be returned. The second section of the law implies that the husband found no guilt in his wife or the slave.<sup>9</sup>

§ 4. If either a slave or a slave-woman should receive something from a wife-of-a-man: they shall cut off the slave's or slave-woman's nose and ears; they shall restore the stolen goods; the man shall cut off his wife's ears.

But if he releases his wife and does not cut off her ears, they shall not cut off (the nose and ears) of the slave or slave-woman and they shall not restore the stolen goods.

§ 5 moves to the situation where a woman has stolen something valuable from someone outside the family. This meant that there had to be some negotiation between the injured party and the woman's husband. We can see that cutting off the nose was a harsher punishment than cutting off the ears.<sup>10</sup>

<sup>8</sup> Lafont, *Femmes*, 305–309, 475f.

<sup>9</sup> Lafont, *Femmes*, 298–300, 476.

<sup>10</sup> Lafont, *Femmes*, 300–302, 476.

§ 5. If a wife-of-a-man should steal something with a value greater than 300 shekels of lead from the house of another man: the owner of the stolen goods shall take an oath, saying, 'If I incited her, saying, 'Commit a theft in my house (may I be struck down).'

If her husband agrees, he shall hand over the stolen goods and he shall ransom her; he shall cut off her ears.

If her husband does not agree to her ransom, the owner of the stolen goods shall take her and he shall cut off her nose.

If the woman decides to deposit allegedly stolen goods outside the family, the one who receives them is implicated in the crime according to § 6.<sup>11</sup>

§ 6. If a wife-of-a-man should place goods for safekeeping outside (of the house): the receiver of the goods shall bear liability for 'stolen property'.

We now move away from the subject of theft to crimes of violence, and § 7 is concerned with a woman who has violently attacked a man.<sup>12</sup>

§ 7. If a woman should lay a hand upon a man and they prove the charges against her: she shall pay 1,800 shekels of lead; they shall strike her 20 blows with rods.

§ 8 continues the theme of a woman attacking a man, and in this case she has damaged a man's testicle when protecting her husband from a violent attack. To understand this law better we should compare a similar Biblical law: 'When two men are fighting and the wife of one of them intervenes to drag her husband clear of his opponent, if she puts out her hand and catches hold of the man by the genitals, you must cut off her hand and show her no mercy' (Deuteronomy 25:11–12). The idea propounded here is that a woman should never do this, even in exceptional circumstances. She will always be punished for doing it and no sympathy is to be shown towards her. The Assyrian law is equally forthright. Her action is seen not just as an assault on the honour of the man but a threat to his potency for engendering children.<sup>13</sup>

§ 8. If a woman should crush a man's testicle during a quarrel: they shall cut off one of her fingers.

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<sup>11</sup> Lafont, *Femmes*, 302–305, 477.

<sup>12</sup> Lafont, *Femmes*, 329 f., 477.

<sup>13</sup> Lafont, *Femmes*, 330–335, 477; S. M. Paul in: E. B. Firmage, *Religion and Law: Biblical-Judaic and Islamic perspectives* (1990) 335–339. For an opinion on the harm done to the other testis see J. Scurlock, B. R. Andersen, *Diagnoses in Assyrian and Babylonian medicine* (2005) 237, 10.160 (*erimu*, a 'mystery lesion').

And if a physician should bandage it but the second testicle then is affected along with it and becomes ..., or if she should crush the second testicle during the quarrel: they shall gouge out both her [...]s.<sup>14</sup>

§9 turns to dealing with a man treating a woman with violence and is a natural sequel to the previous law.<sup>15</sup>

§9. If a man lays a hand upon a wife-of-a-man, behaves toward her like a bull, and they prove the charges against him and find him guilty: they shall cut off one of his fingers. If he should kiss her: they shall draw his lower lip across the blade (?) of an axe and cut it off.

§10 states that whether a man or a woman committed a murder both are treated equally when it comes to punishment.

§10. [If either] a man or a woman enters [a man's] house and kills [either a man] or a woman: [they shall hand over] the killers [to the head of the household]. If he so chooses, he shall kill them; or if he chooses to come to an accommodation, he shall take [their property]. And if there is [nothing of value to give from the house] of the killers, [he shall take] either a son [or a daughter ...].

No translation is possible of the fragments that remain of §11, but there is enough to show that it continues the theme of murder.

§§12–18 is a series of laws concerning a woman who has sex outside of marriage.<sup>16</sup> When deciding an appropriate punishment, what was relevant was the place where the offence occurred. §12 deals with rape in the open air and the woman is deemed to be innocent.<sup>17</sup>

§12. If a wife-of-a-man should walk along the main thoroughfare, and a man should seize her and say to her, 'I want to copulate with you!': she shall not consent but she shall protect herself.

Should he seize her by force and copulate with her — whether they discover him upon the wife of the man or witnesses later prove the charges against him that he copulated with the woman — they shall kill the man; there is no punishment for the woman.

<sup>14</sup> M. Roth suggests 'eyes' or 'breasts' as a possible restoration.

<sup>15</sup> Lafont, *Femmes*, 340–343, 477; L. Marti, NABU 2004/33.

<sup>16</sup> For more on adultery and rape see Chapters 10–11.

<sup>17</sup> M. Roth divides this section into two parts, making the grammatical clauses 'she shall not consent but she shall protect herself' as an apodosis to the first part. An alternative analysis is to keep the section united, and consider those grammatical clauses as the continuation of a complex protasis: 'If he should say ... (and) if she does not consent ... and if he should seize her ...' (G. Cardascia and R. Borger). Lafont, *Femmes*, 477 f.

§ 13 deals with an act of adultery in another man's house and prescribes the death penalty for both parties.

§ 13. If a wife-of-a-man should go out of her house and go to a man where he resides, and should he copulate with her knowing that she is the wife-of-a-man: they shall kill the man and the wife.

But if the act of adultery occurs in a public place a punishment chosen by the woman's husband will apply to both parties.

§ 14. If a man should copulate with a wife-of-a-man either in an inn or in the main thoroughfare, knowing that she is the wife-of-a-man: they shall treat the copulator as the man declares his wife is to be treated.

If he should copulate with her without knowing that she is the wife-of-a-man: the copulator is clear; the man shall prove the charges against his wife and he shall treat her as he wishes.

§ 15 prescribes violent punishment or even the death penalty when a husband discovers his wife committing adultery at home.<sup>18</sup>

§ 15. If a man should seize a man upon his wife and they prove the charges against him and find him guilty: they shall kill both of them; there is no liability for him.

If he seize and bring him before either the king or the judges, and they prove the charges against him and find him guilty: if the woman's husband kills his wife, then he shall also kill the man; if he cuts off his wife's nose, he shall turn the man into a eunuch and they shall lacerate his entire face. But if [he releases] his wife, he shall [release] the man.

§ 16 states that a woman who has instigated an adulterous affair will be punished according to her husband's discretion and the man will go free. But if she was an unwilling partner to the crime both parties receive the same punishment.

§ 16. If a man [should copulate] with the wife-of-a-man [... by] her invitation: there is no punishment for the man; the man (i.e., husband) shall impose whatever punishment he chooses upon his wife.

If he should copulate with her by force and they prove the charges against him and find him guilty: his punishment shall be identical to that of the wife of the man.

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<sup>18</sup> For more on this subject see Chapter 10. There, instead of M. Roth's 'If he seize and bring him ...' we suggested 'If they both (dual) are caught and brought ...'. Cf. Lafont, *Femmes*, 69–72, 478 f.

It was obviously important when making any allegation of adultery to be able to substantiate the truth of that allegation with witnesses. In § 17 it is agreed that there are no witnesses so the god of the flowing river becomes the judge.<sup>19</sup>

§ 17. If a man should say to a man, 'Everyone always copulates with your wife!' but there are no witnesses: they shall draw up a binding agreement, they shall undergo the divine River Ordeal.

But in § 18 we read of someone who claimed to be able to prove the allegation but failed to do so. That resulted in him suffering physical punishment, an obligation to do forced labour, public humiliation by being shaved, and an obligation to pay an exorbitant fine.

§ 18. If a man says to his comrade, either in private or in a public quarrel, 'Everyone always copulates with your wife,' and further, 'I can prove the charges,' but he is unable to prove the charges and does not prove the charges: they shall strike that man 40 blows with rods, he shall perform the king's service for one full month, they shall shave him, and he shall pay 3,600 shekels of lead.

§ 19 is a natural sequel to the previous law but deals with an allegation of homosexuality.<sup>20</sup>

§ 19. If a man in private spreads rumors about his comrade, saying, 'Everyone always copulates with him,' or in a quarrel before people says to him, 'Everyone always copulates with you,' and further, 'I can prove the charges against you,' but he is unable to prove the charges and does not prove the charges: they shall strike that man 50 blows with rods, he shall perform the king's service for one full month, they shall shave him, and he shall pay 3,600 shekels of lead.

When there is proof that a man has committed a homosexual act § 20 states that he will be made to suffer as he had made others suffer.

§ 20. If a man copulates with his comrade and they prove the charges against him and find him guilty, they shall copulate with him and they shall turn him into a eunuch.

<sup>19</sup> Lafont, *Femmes*, 272f., 479. On §§ 17–18: C. Locher, *Die Ehre einer Frau in Israel* (1986) 356–365.

<sup>20</sup> Locher, *Die Ehre einer Frau*, 366–372; J. S. Cooper in T. Abusch, *Riches hidden in secret places* (= *Studies Th. Jacobsen*) (2002) 82–85. The Babylonians (just like the Greeks) considered the passive role in a homosexual relationship as scandalous. In Akkadian that partner was called an *aḫurrû*, corresponding to the English word 'catamite'. That word is derived from Latin *Catamitus*, which in turn was derived from Ganymede, the beautiful young shepherd lad whom Zeus could not resist. See A. R. George, *RA* 85 (1991) 160; R. Westbrook, *JCS* 55 (2003) 93f. J. S. Cooper assumes that they were male prostitutes.

§ 21 returns to the subject of an act violence against a woman. One that causes a miscarriage is often featured in law-books.<sup>21</sup>

§ 21. If a man strikes a daughter-of-a-man and thereby causes her to abort her fetus, and they prove the charges against him and find him guilty: he shall pay 9,000 shekels of lead, they shall strike him 50 blows with rods, he shall perform the king's service for one full month.

§ 22 ensures that a traveller should be absolutely sure that any woman he takes as a companion for his journey is not married if he wishes to avoid punishment.

§ 22. If another man — neither her father, nor her brother, nor her son — should arrange to have a wife-of-a-man travel with him: then he shall swear an oath to the effect that he did not know that she is the wife-of-a-man and he shall pay 7,200 shekels of lead to the woman's husband.

If [he knows that she is the wife-of-a-man]: he shall pay damages and he shall swear, saying, 'If I copulated with her (may I be struck down).'

But if the wife-of-a-man should declare, 'He did copulate with me,' [since]<sup>22</sup> the man has paid damages to the man, he shall undergo the divine River Ordeal; there is no binding agreement.

If he should refuse to undergo the divine River Ordeal, they shall treat him as the woman's husband treats his wife.

§ 23 deals with complications that arose when a wife invites another man's wife into her house to have sex with a man.<sup>23</sup>

§ 23. If a wife-of-a-man should take a wife-of-a-man into her house and give her to a man for purposes of copulation, and the man knows that she is a wife-of-a-man: they shall treat him as one who has copulated with a wife-of-a-man, and they shall treat the procuress just as the woman's husband treats his wife the copulator.

And if the woman's husband intends to do nothing to his wife the copulator: they shall do nothing to the copulator or to the procuress; they shall release them.

But if the wife-of-a-man does not know (what was intended) but the woman who takes her into her house brings the man in to her by deceit (?), and he then copulates with her — if, as soon as she leaves the house, she should declare that she has been the victim of copulation: they shall release the woman, she is clear; they shall kill the copulator and the procuress.

But if the woman should not so declare: the man shall impose whatever punishment on his wife he wishes; they shall kill the copulator and the procuress.

<sup>21</sup> Bottéro, *Annuaire 1966/1967*, 95–97, compares § 21 with the Laws of Hammurabi § 209.

<sup>22</sup> Instead of restoring 'since' at this point Cardascia prefers 'although'.

<sup>23</sup> G. Ries, 'Kuppelei', *RIA VI/5–6* (1983) 364–366.

§ 24 makes it an offence for a wife to offer houseroom to another man's wife who wishes to separate from him. We know too little about the society of that time to understand this law as we would like. The 'Assyrian' seems to be viewed as a second-rate citizen, and the fine of one-third (or 'triple') is evidently a fixed penalty.<sup>24</sup>

§ 24. If a wife-of-a-man should withdraw herself from her husband and enter into the house of an Assyrian man, either in that city or in any of the nearby towns, to a house which he assigns to her, residing with the mistress of the household, staying overnight three or four nights, and the householder is not aware that a wife-of-a-man is residing in his house, and later that woman is seized: the householder whose wife withdrew herself from him shall [mutilate] his wife and [not] take her back; they shall cut off the ears of the wife of the man with whom his wife resided.

If he pleases: her husband shall give 12,600 shekels of lead as her value, and, if he pleases, he shall take back his wife.

And if the householder knows that it is a wife-of-a-man who is residing in his house with his wife: he shall give 'triple.' But if he should deny (that he knew of her status): he shall declare, 'I did not know'; they shall undergo the divine River Ordeal. And if the man in whose house the wife-of-a-man resided should refuse the divine River Ordeal: he shall give 'triple.'

If it is the man whose wife withdrew herself from him who should refuse the divine River Ordeal: he is clear, he shall bear the expenses of the divine River Ordeal.

And if the man whose wife withdrew herself from him does not mutilate his wife: he shall take back his wife; no sanctions are imposed.

Unusual situations could arise about gifts that were given on the occasion of an inchoative marriage, especially if circumstances meant that the marriage gifts could be reclaimed. § 27 states that a husband could reclaim those gifts if his wife continued to live at home with her father.<sup>25</sup> § 25 and § 26 deals with problems of inheritance for such a wife when her husband dies. The same situation occurs again in §§ 30–32.

§ 25. If there is a woman residing in her own father's house and her husband is dead, her husband's brothers have not yet divided their inheritance, and she has no son, (as for) whatever valuables her husband bestowed upon her that are not missing: her husband's brothers who have not yet divided their inheritance shares shall take.

As for the rest (of the property): they shall resort to a verdict by the gods, they shall provide proof, and they shall take; they shall not be seized for the divine River Ordeal or the oath.

§ 26. If there is a woman residing in her own father's house and her husband is dead, (as for) whatever valuables her husband bestowed upon her: if there are sons of her husband, they shall take; if there are no sons of her husband, she herself shall take.

<sup>24</sup> Lafont, *Femmes*, 391–396.

<sup>25</sup> G. Cardascia, *Les lois assyriennes* (1969) 64, 154.

§ 27. If a woman is residing in her own father's house and her husband) visits her regularly: he himself shall take any marriage settlement (*nudunnû*) which he, her husband, gave to her; he shall have no claim to anything belonging to her father's house.

§ 28 deals with the rights of inheritance for the child of a widow whose husband had died while she was still pregnant and who had decided to marry another man into whose household that child was born, but her second husband had not formally adopted the child. The rights of the child of that widow needed to be safeguarded.<sup>26</sup>

§ 28. If a widow should enter the house of a man and she is carrying her (dead husband's) posthumous son with her, he grows up in the house of the man who took her (in marriage), but no tablet of his sonship is written: he will not take an inheritance share from the estate of the one who raised him and he will not be responsible for (its) debts; he shall take an inheritance share from the estate of his begetter in accordance with his portion.

§ 29 states that any gift a bride received for her sons should not be passed on to her father-in-law's sons.

§ 29. If a woman should enter the house of her husband: her dowry and whatever she brings with her from her father's house, and also whatever her father-in-law gave her upon her entering, are clear for her sons; the sons of her father-in-law shall have no valid claim. But if her husband takes control (?) of her: he shall give it to whichever of his sons he wishes.

§ 30–31 are two laws which concern the practice known as levirate marriage (see Chapter 14).

§ 30. If a father should bring the ceremonial marriage prestation and present <the bridal gift><sup>27</sup> to the house of the father-in-law of his son, and the woman is not (yet) given to his son, and another son of his, whose wife was residing in her father's house, is dead: he shall give the wife of his deceased son into marriage to his second (younger) son, to whose father-in-law's house he has presented (the bridal gift).

(Even) if the master of the daughter who is (also?) in receipt of the bridal gift does not agree to give his daughter (to the younger son): if the father who presented the bridal gift so pleases, he shall take his daughter-in-law and give her to his (younger) son. Or if he so pleases, as much as he presented, whether lead, silver, gold, or anything not edible, he shall take (back) in the quantities originally given; but he shall have no claim to anything edible.

<sup>26</sup> For Middle Assyrian widows (here and in §§ 33–35) see C. Wilcke, 'Familiengründung', 303–306.

<sup>27</sup> 'Bring the ceremonial marriage prestation and present <the bridal gift>': Akkadian *bibla itta-bal* <*zubullâ*> *izzibil*.

§ 31. If a man should present the bridal gift to the house of his father-in-law, and his wife is dead, but there are (other living) daughters of his father-in-law: if he so pleases, he shall take (in marriage) a daughter of his father-in-law in lieu of his deceased wife. Or if he so pleases, he shall take (back) the silver that he gave; they shall not give (back) to him grain, sheep, or anything edible; he shall receive only the silver.

In § 32 the subject of the wife who continues to live in her father's house is raised again, and makes clear that she is still responsible for her husband's debts after his death.

§ 32. If a woman is residing in the house of her own father and her [...] <sup>28</sup> is given, whether she is taken or not taken into the house of her father-in-law: she shall be responsible for her husband's debts, transgression, or punishment.

§ 33 makes every effort to secure a widow's welfare, even if she has no father-in-law and no sons to protect her.

§ 33. If a woman is residing in the house of her own father, her husband is dead, and she has sons: [...] (large gap)]; or [if he so pleases], he shall give her into marriage (*aḥuzzatu*) to her father-in-law.

If her husband and her father-in-law are both dead, and she has no son: she is a widow; she shall go wherever she pleases.

§ 34 makes it clear that even without a binding agreement a widow who lives with a man for two years is to be considered his wife.

§ 34. If a man should take (in marriage) a widow, her binding agreement is not concluded, (but) she resides in his house for two years: she is a wife; she shall not leave.

§ 35 concerns a widow who moved into another man's house and brought her possessions with her. Similarly if a man moved into a widow's house he would also bring his possessions with him.

§ 35. If a widow should enter into the house of a man: whatever she brings with her all belongs to her (second) husband.

And if a man should enter (the house of) a woman: whatever he brings with him all belongs to the woman.

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**28** Here (§ 32) Cardascia restores *nudunnû* 'marriage settlement', and refers to 'it', not 'she', 'being taken or not taken', but grammatically *nudunnû leqiat* would be irregular.

§ 36 concerns a wife whose husband had left her for some reason or other, but he did not return and she found herself deserted.

§ 36. If a woman either is residing in her father's house or her husband settles her in a house elsewhere, and her husband then travels abroad but does not leave her any oil, wool, clothing, or provisions, or anything else, and sends her no provisions from abroad: that woman shall remain for her husband for five years; she shall not reside with a (second) husband.

If she has sons: they<sup>29</sup> shall be hired out and provide for their own sustenance; the woman shall wait for her husband, she shall not reside with a (second) husband.

If she has no sons: she shall wait for her husband for five years; at the onset of (?) six years, she shall reside with the husband of her choice; her (first) husband, upon returning, shall have no valid claim to her; she is clear for her latter husband.

If he is delayed beyond the five years but is not detained of his own intention, whether because a ... seized him and he fled or because he was falsely arrested and was detained: upon returning he shall so prove, he shall give a woman comparable to his wife and he shall take his wife.

And if the king should send him to another country and he is delayed beyond the five years: his wife shall wait for him; she shall not go to reside with a (second) husband.

And if she should reside with a (second) husband before five years and should she give birth: because she did not wait in accordance with the agreement but was taken (in marriage), her (first) husband, upon returning, shall take her and also her offspring.

While in the previous section there was no implication that the husband had intended to abandon his wife, in § 37–38 he apparently wanted the separation to be permanent

§ 37. If a man intends to divorce<sup>30</sup> his wife: if it is his wish, he shall give her something; if it is not his wish, he shall not give her anything, and she shall leave empty-handed.<sup>31</sup>

§ 38. If a woman is residing in her own father's house and her husband divorces her: he shall take the valuables which he himself bestowed upon her; he shall have no claim to the bridewealth which he brought, it is clear for the woman.

§ 39 shows that a woman who has been made a pledge may be given away in marriage.

§ 39. If a man should give to a husband someone who is not his own daughter, (and) if previously her father had been in debt and she had been made to reside as a pledge: should a

<sup>29</sup> The sentence 'they shall be hired out and provide for their own sustenance' may not begin the apodosis but continue the protasis, allowing the apodosis to begin with 'the woman shall wait ...'; see Cardascia and Borger, as opposed to CAD A/1 148b.

<sup>30</sup> Instead of M. Roth's 'a man intends to divorce' an alternative translation would be 'a man leaves'.

<sup>31</sup> For further details see Chapter 9.

prior creditor come forward, he shall receive in full the value of the woman from the giver of the woman (in marriage); if he has nothing to give, he shall take the giver.  
 But if she had been saved from a catastrophe<sup>32</sup>: she is clear for the one who saved her.  
 And if the one who takes (in marriage) the woman either causes a tablet to be ... for him or they have a claim in place against him: he shall [...] the value of the woman, and the giver [...].<sup>33</sup>

§40 concerns veiling. It begins in the style of a regulation which was already accepted and only later are various possible situations described in conditional clauses. The ‘veiled prostitute’ is the first of many other classes of women to be mentioned, which is why it is supposed that the words ‘Assyrian’ and ‘widows’ should be added at the beginning.<sup>34</sup>

§40. A wife-of-a-man, or [widows], or [Assyrian] women who go out into the main thoroughfare [shall not have] their heads [bare].

Daughters of a man [... with] either a ...-cloth or garments or [...] shall be veiled, [...] their heads [... (gap) ...] When they go about [...] in the main thoroughfare during the daytime, they shall veil themselves.

A concubine who goes about in the main thoroughfare with her mistress is to be veiled.

A *qadištu*-priestess whom a husband has taken (in marriage) is to be veiled in the main thoroughfare, but one whom a husband has not taken (in marriage) is to have her head bare in the main thoroughfare, she shall not veil herself.

A prostitute shall not veil herself, her head shall be bare.

Whoever sees a veiled prostitute shall seize her, secure witnesses, and bring her to the palace entrance. They shall not take her jewelry; he who has seized her shall take her clothing; they shall strike her 50 blows with rods; they shall pour hot pitch over her head.

And if a man should see a veiled prostitute and release her and not bring her to the palace entrance: they shall strike that man 50 blows with rods; the one who informs against him shall take his clothing; they shall pierce his ears, thread (them) on a cord, tie (it) at his back; he shall perform the king’s service for one full month.

Slave-women shall not veil themselves, and he who should see a veiled slave-woman shall seize her and bring her to the palace entrance: they shall cut off her ears; he who seizes her shall take her clothing.

If a man should see a veiled slave-woman but release her, not seize her, not bring her to the palace entrance, and they then prove the charges against him and find him guilty: they

<sup>32</sup> M. Roth suggests that she may have been helped to avoid this ‘catastrophe’ when someone gave her something ‘in times of famine or crisis with the intention of saving her life’ (in Chavalas 173 note 33). K. R. Veenhof: ‘But if she has been badly provided for, she is free from her provider’; *Festschrift L. Matouš* II (1978) 294. Another attempt to explain this passage was made by M.-J. Aynard, J.-M. Durand, *Assur* 3/1 (July 1980) 24 n. 36.

<sup>33</sup> Cardascia and Borger prefer ‘he shall [pay] the value of the woman, and the giver [shall be acquitted]’.

<sup>34</sup> See further Chapters 1 and 22; see also Bottéro, 86; Lafont, *Femmes*, 461–463.

shall strike him 50 blows with rods; they shall pierce his ears, thread (them) on a cord, tie (it) at his back. The one who informs against him shall take his garments. He shall perform the king's service for one full month.

§ 41 shows that a husband could veil his concubine like a wife.

§ 41. If a man would veil his concubine, he shall assemble five or six of his comrades, he shall veil her in their presence, he shall declare, 'She is my wife': she is his wife.

A concubine who is not veiled in the presence of the people, whose husband did not declare, 'She is my wife': she is not a wife, she is indeed a concubine.

If a man is dead and there are no sons of his veiled wife: the sons of concubines are indeed sons; they shall take the inheritance share.

At this point what appears to be the second part of the law-book begins. What follows can be seen as supplementing the preceding laws. §§ 42–43 discuss restitution after the breaking off of a betrothal, and as such relate to §§ 30–31.<sup>35</sup>

§ 42. If a man pours oil on the head of a daughter-of-a-man on the occasion of a holiday, or brings dishes on the occasion of a banquet: they shall not make restoration (of gifts given).

§ 43. If a man either pours oil on the head or brings (provisions) for the banquet, (and) the son to whom he assigned the wife either dies or flees: he shall give her (in marriage) to whichever of his remaining sons he wishes, from the oldest to the youngest of at least ten years of age.

If the father is dead and the son to whom he assigned the wife is also dead, and there is a son of the deceased son who is at least ten years old: he shall take her (in marriage).

If the sons of the (dead) son are less than ten years old: if the father of the daughter wishes, he shall give his daughter (in marriage to one of them); or if he wishes he shall make a restitution (of gifts given).

If there is no son: he shall return as much as he received, precious stones or anything not edible, in its full amount; but he shall not return anything edible.

§ 44 returns to the person who was the subject of a pledge, first raised in § 39.

§ 44. If a male Assyrian or if a female Assyrian who is residing in the house of a man as a pledge for a debt for as much as his value has been taken for the full value:<sup>36</sup> he may whip (the pledge), pluck out (the pledge's) hair, (or) mutilate or pierce (the pledge's) ears.

<sup>35</sup> For veiling see Chapter 1.

<sup>36</sup> K. R. Veenhof: i.e., who has been definitely acquired by his creditor; *Festschrift L. Matouš II* (1978) 294 f.

§45 returns to the problems raised for a woman when her husband was captured by an enemy, a well-known theme in law-books. The wife who finds herself deserted was raised earlier in §36.<sup>37</sup>

§45. If a woman is given (in marriage) and the enemy takes her husband prisoner, and she has neither father-in-law nor son: she shall remain for her husband for two years.

During these two years if she has no provisions, she shall come forward and so declare; if she is a citizen dependent upon the palace: her [...] shall provide for her and she shall do work for him.

[If she is a wife] of a *hupšū*-soldier: [...] shall provide for her [and she shall do work for him]. And [if she is a wife-of-a-man whose] field and [house ...], she shall come forward [and declare before the judges], ‘[I have nothing] to eat.’ The judges shall question the mayor and the noblemen of the city; they shall give to her, in accordance with the going rate of a field in that city, a field and house for her provisioning for two years; she shall be resident (in that house) and they shall write a tablet for her. She shall allow two full years to pass, and then she may reside with the husband of her own choice. They shall write a tablet for her as for a widow.

If later on her lost husband should return to the country: he shall take back his wife who is taken (in marriage) outside the family; he shall have no claim to the sons she bore to her later husband; her later husband indeed shall take them. The field and house that she gave for full price outside the family for her provisioning, if it is not entered into the royal holdings (?): he shall give as much as was given, and he shall take it back.

And if he should not return but dies in another country: the king shall give his field and house wherever he chooses to give.

§46 returns to the responsibility of her sons to care for their widowed mother, a subject raised in §33. The reference to a bride (or according to M. Roth a ‘daughter-in-law’) means a woman who married but is still without children.<sup>38</sup>

§46. If a woman whose husband is dead does not leave her house upon the death of her husband, if her husband did not deed her anything in writing: she shall reside in the house of (one of) her sons, wherever she chooses; her husband’s sons shall provide for her, they shall draw up an agreement to supply her with provisions and drink as for a daughter-in-law whom they love.

If she is a second (wife)<sup>39</sup> and has no sons of her own: she shall reside with one (of her husband’s sons) and they shall provide for her in common.

<sup>37</sup> The latest interpretation of this section was given by S. Lafont in E. Bourzanel, *Les féodalités* (1998) 580–584.

<sup>38</sup> See further Chapter 13.

<sup>39</sup> M. Roth translates *urkītu* as ‘a second (wife)’; see also Cardascia and CAD A/2 287a. Borger suggests that ‘a later wife’ is a wife the man married later, perhaps after the death of the first wife.

If she (is a second wife and) does have sons, and the sons of the first (wife) do not agree to provide for her: she shall reside in the house of her own sons, wherever she chooses; her own sons shall provide for her, and she shall do service for them.

And if there is among her husband's sons one who intends to take her (in marriage): [...] shall not provide for her.<sup>40</sup>

§ 47 introduces sorcery as a new subject. It was more often a woman than a man who was accused of sorcery.<sup>41</sup> The general rule of law was that sorcery had to be punished by death, and here it is stated that all means possible must be used to prove the sorcery.

§ 47. If either a man or a woman should perform witchcraft and they (the paraphernalia) are found in their possession, and they prove the charges against them and find them guilty: they shall kill the performer of witchcraft.

A man who heard from an eyewitness to the witchcraft that he witnessed the performance of the witchcraft – (an eyewitness meaning one) who said to him: 'I myself saw it' – the hearsay-witness shall go and inform the king.

If the eyewitness should recant what he reports to the king: he (the hearsay-witness) shall declare before the divine Bull-the-Son-of-the-Sun-God, 'If he did not say it to me (may I be struck down)'; he is clear. The king shall interrogate as he sees fit the eyewitness who spoke and then recanted and he shall investigate his matter. An exorcist shall have the man make a declaration on a day when he is purified and then he himself shall declare as follows, 'No one shall release you (plural) from the oath you swore by the king and by his son; you are bound by oath to the stipulations of the agreement to which you swore by the king and by his son.'

§ 48 can be linked with § 44, both of which resume the theme of § 39 in the first part of the law-book. The permission of the family was required if a woman who had been pledged was to be given in marriage.

§ 48. If a man <wants to give in marriage> his debtor's daughter who is residing in his house as a pledge: he shall ask her father<sup>42</sup> and he shall give her to a husband.

If her father does not agree: he shall not give her.

If her father is dead: he shall ask one of her brothers and the latter shall report to her (other) brothers.

If a brother declares, 'I will redeem my sister within one full month' but if he should not redeem her within one full month: the creditor, if he so pleases, shall clear her of encumbrances and give her to a husband; [...] according to [...] he shall give her [...].

<sup>40</sup> In the first edition of her translation of the laws (Roth 1995, 172) M. Roth has 'one (...) who is willing to marry her, [it is he who shall provide for her; her own sons] shall not provide for her', similar to Cardascia and Borger.

<sup>41</sup> See further Chapter 19.

<sup>42</sup> The text is not correct.

Very little of the badly damaged § 49 can be translated.

§ 49. [...] like a brother [...]. And if the prostitute is dead: because (?) her brothers declare, ... they shall divide shares [with (?)] the brothers of their mother (?).

The last laws on the tablet can be seen as supplementary to the crimes covered earlier, especially in §§ 1–11. §§ 50–53 raise again the consequences of an act of violence which caused a miscarriage, a theme introduced earlier in § 21.<sup>43</sup>

§ 50. [If a man] strikes [a wife-of-a-man and causes her to abort her fetus, ...]: a wife-of-a-man who [...] and they shall treat him as [he treats] her; he shall make full payment of a life for her fetus.

And if that woman dies: they shall kill the man, he shall make full payment of a life for her fetus.

And if there is no son of the husband of that woman, and his wife whom he struck aborted her fetus: they shall kill the striker for the sake of her fetus.

If her fetus was a female: he shall make full payment of a life only.<sup>44</sup>

§ 51. If a man strikes a wife-of-a-man who does not raise (her children) and causes her to abort her fetus: it is a punishable offense; he shall give 7,200 shekels of lead.

§ 52. If a man strikes a prostitute and causes her to abort her fetus: they shall assess him blow for blow; he shall make full payment of a life.

§ 53. If a woman aborts her fetus by her own action and they then prove the charges against her and find her guilty: they shall impale her; they shall not bury her.

If she dies as a result of aborting her fetus: they shall impale her; they shall not bury her.

If they should [conceal] that woman because she aborted her fetus [...].

The only legible word in § 54 is ‘slave-women’ so it may belong to the theme of what has preceded or what follows in §§ 55–56. These laws return to the theme of rape, raised earlier in § 12 and § 16. § 55 concerns a virgin who is raped, and § 56 one who is complicit to having sex with a man.<sup>45</sup>

§ 55. If a man forcibly seizes and rapes a maiden who is residing in her father’s house, [...] who is not spoken for (?),<sup>46</sup> whose [womb (?)] is not opened, who is not taken (in marriage), and against whose father’s house there is no outstanding claim — whether (the rape occurs) within the city, or in the countryside, or at night, whether in the main thoroughfare, or in a

<sup>43</sup> For § 50 and § 52 see Lafont, *Femmes*, 366–370, 482.

<sup>44</sup> Cardascia and Lafont translated the suffix *-ma* as ‘nevertheless’, but in § 31 it also means ‘only’.

<sup>45</sup> See further Chapter 11. For § 55 see C. Locher, *Die Ehre einer Frau in Israel* (1986) 128–154; E. Otto, *ZAW* 105 (1993) 153–165; Lafont, *Femmes*, 145–157, 483; for § 56 see Locher, 155; Lafont, *Femmes*, 121–131, 483 f.

<sup>46</sup> B. Landsberger translated, ‘[whose body] had not (yet) become unclean’, which is accepted by W. R. Mayer, *Or. NS* 81 (2012) 99, on *urrušu* v. in the CAD.

granary, or during the city festival: the father of the maiden shall take the wife of the copulator of the maiden and give her over to be raped; he shall not return her to her husband, he shall take her (for himself). The father shall give his daughter, she who is the victim of the copulation, to her copulator into marriage.

If he (the copulator) has no wife: the copulator shall give ‘triple’ the silver as the value of the maiden to her father; her copulator shall take her (in marriage); he shall not reject (?) her.

If the father does not desire it so: he shall accept ‘triple’ silver for the maiden, and he shall give his daughter (in marriage) to whomever he chooses.

§ 56. If a maiden should willingly give herself to a man: the man shall so swear; they shall have no claim to his wife; the copulator shall give ‘triple’ the silver as the value of the maiden; the father shall treat his daughter as he chooses.

§§ 57–59, though fragmentary, are clearly formulated in the style of regulations, in the same way as the law about veiling began in § 40. It seems to be a list of legitimate punishments for women and makes a conclusion to this law-book. They may limit the severity of the punishments a husband may administer whenever the phrase ‘as he wishes’ is used. The ‘tablet’ refers to the first part of the lawbook, §§ 1–41.

§ 57. Whether it is a beating or [... for] a wife-of-a-man [... that is] written on the tablet [...].

§ 58. For all punishments[...] cutting off [...] and ... [...].

§ 59. In addition to the punishments for [a wife-of-a-man] that are [written] on the tablet, a man may [whip] his wife, pluck out her hair, mutilate her ears, or strike her; it bears no offence.

The last four paragraphs on the tablet have been erased, before the concluding colophon giving the date: ‘Day 2 of Month II. The official for the year was Saggi’u.’

It will be useful to look at this collection of laws as a whole. On the one hand, some scholars have criticised the laws for their negativity. Applying the *ius talionis*, ‘eye for eye, tooth for tooth’ is unquestionably cruel, and there are other cases where the physical punishment mirrors the original offence. The offender will be treated with extreme severity and become subject to extraordinarily high fines. That a man could punish a woman so harshly according to the last laws shows that women were totally subjugated.<sup>47</sup> On the other hand, others see the *ius talionis* as a straightforward objective standard, a payment in one’s own coin, giving tit for tat, a step forward for ancient law givers. While the total subjugation of the woman is evident in the whole document, we have to remember that it is the product of a patriarchal society where that was the norm. It has to be remem-

<sup>47</sup> Bottéro, *Annuaire 1966/1967*, 98 f.

bered that the Assyrians more than other nations were famed for their cruelty. The most extreme humiliation of a woman is the drastic requirement of obliging the wife of a convicted rapist to submit herself to the same crime (§ 55), but that punishment was essentially based on *ius talionis*. We find the same principle applied to family dependants in several of the earlier laws of Hammurabi: a man who causes a miscarriage and the death of the woman has to have his own daughter killed (§ 210); the builder of a new house which collapses causing the death of the owner's son has to have his own son killed (§ 210); a creditor who has seized a person to secure the debt but that person dies because of the creditor's ill-treatment shall also have his own son killed (§ 116).

G. Cardascia, a professional lawyer, detects four principles underlying these laws: only the guilty were punished (*la responsabilité pénale est individuelle*); the perpetrator is guilty since he knew what he was doing (*la responsabilité pénale est liée à une intention délictueuse*); applying *ius talionis* and letting the physical punishment mirror the crime are objective judgements (*l'adaptation objective de la peine au délit*); the perpetrator of the crime and the accomplice are given the same punishment (*culpabilité égale, peine égale*).<sup>48</sup> It should be noted regarding the first principle that the impudent woman is punished alone and does not benefit from having her family share the responsibility for her crime (§ 2). Conversely the wife of the rapist shares the solidarity of her family and is therefore punished by being raped (§ 55). Both women were abandoned to endure their punishments alone.

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<sup>48</sup> G. Cardascia, 'Les valeurs morales dans le droit assyrien' (1976), reprinted in *Hommage à Guillaume Cardascia* (= Méditerranées 3) (1995) 161–170; see especially 166–169. When he speaks of 'un musée juridique des horreurs' (p. 170) he is not characterising the law-book, and C. Saporetto is wrong on two occasions to ascribe this opinion to him.