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VOLUME 15

EDITORS

W. NORMAN BROWN JOHN K. SHRYOCK
E. A. SPEISER

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NEW HAVEN, CONNECTICUT
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THE BASIS OF ISRAELITE MARRIAGE

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THE BASIS OF ISRAELITE MARRIAGE

BY

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ABBREVIATIONS

AASOR	<i>Annual of the American Schools of Oriental Research.</i>
AC	Assyrian Code; i. e., the Middle Assyrian Laws (cited by sections, references being to Tablet I unless otherwise stated).
AJSL	<i>American Journal of Semitic Languages.</i>
BASOR	<i>Bulletin of the American Schools of Oriental Research.</i>
BCLD	Burrows, Millar, "The Complaint of Laban's Daughters," <i>JAOS</i> lvii (1937), pp. 259-276.
BHA	Benzinger, I. G. A., <i>Hebräische Archäologie</i> , 1894.
CED	Cuq, E., <i>Études sur le droit babylonien, les lois assyriens, et les lois hittites</i> , 1929.
CEN	Chiera, <i>Excavations at Nuzi</i> .
CH	Code of Hammurabi.
CMM	Chatila, Kh., <i>Le mariage chez les musulmans en Syrie</i> , 1933.
DDRS	Dussaud, R., <i>Les découvertes de Ras Shamra et l'Ancien Testament</i> , 1937.
DMAL	Driver, G. R., and Miles, J. C., <i>The Assyrian Laws</i> , 1935.
DMI	Dussaud, R., "Le 'mohar' israelite," <i>Comptes rendus, Acad. des Inscr. et Belles Lettres</i> , 1935, pp. 141-151.
DVW	David, M., <i>Vorm en Wesen van de Huwelijksluiting naar de Oud-Oostersche Rechtsopvatting</i> , 1934.
EEF	Eberharder, A., <i>Das Ehe- und Familienrecht der Hebräer</i> , 1914.
EER	Ebeling, "Ehe," <i>Reallex. der Assyriologie</i> .
EWB	Eberharder, A., "Was bedeutet Mohar?" <i>Theologische Quartalschrift</i> , 1913, pp. 489-508.
GMC	Granqvist, H., <i>Marriage Conditions in a Palestinian Village</i> , 2 vols., 1931-33.
GNT	Gordon, C. H., "Nuzi tablets relating to women" (<i>Analecta Orientalia</i> xii. 163-84).
GSW	Gordon, C. H., "The status of woman reflected in the Nuzi tablets," <i>ZA</i> xliii (1936), 147-69.
GTK	Gadd, C. J., "Tablets from Kirkuk," <i>RA</i> xxiii (1920), 49-161.
HSS	<i>Harvard Semitic Series.</i>
JAOS	<i>Journal of the American Oriental Society.</i>
JBL	<i>Journal of Biblical Literature.</i>
JRAS	<i>Journal of the Royal Asiatic Society</i> (London).
KER	Korošec, V., "Ehe," <i>Reallex. der Assyriologie</i> .
KF	Koschaker, P., "Fratriarchat, Hausgemeinschaft, u. Mutterrecht in Keilschriftrechten," <i>ZA</i> xli (1933), 1-80.
KNR	Koschaker, P., "Neue keilschriftliche Rechtsurkunden" (<i>Abh. d. Sächs. Akad. d. Wissensch.</i> XXXIX 5).
KQU	Koschaker, P., "Quellenkritische Untersuchungen zu den altassyrischen Gesetzen," <i>MVAG</i> xvi, pp. 46 ff.
KRS	Koschaker, P., <i>Rechtsvergleichende Studien zur Gesetzgebung Hammurapis</i> , 1917.

KUH	Kohler & Ungnad, <i>Hammurabis Gesetz</i> , 6 vols.
LBA	Lévy-Bruhl, <i>L'âme primitive</i> , 1927 (references are to the English translation, <i>The Soul of the Primitive</i> , 1928).
MVAG	<i>Mitteil. d. Vorderas. Gesellsch.</i>
NBG	Neubauer, J., "Beiträge zur Geschichte des biblisch-talmudischen Eheschließungsrechts," MVAG xxiv-xxv.
NHA	Nowack, C. P., <i>Lehrbuch der hebräischen Archäologie</i> , 1894.
NKGW	<i>Nachr. d. königl. Gesellsch. d. Wissensch. zu Göttingen.</i>
PI	Pedersen, J. T. E., <i>Israel I-II</i> , 1926.
RA	<i>Revue d'Assyriologie.</i>
RB	<i>Revue Biblique.</i>
SAR	Schorr, M., "Altbabylonische Rechtsurkunden aus der Zeit der I. babylonischen Dynastie" (<i>Sitzungsber. d. Kais. Akad. d. Wissensch. in Wien, Phil.-Hist. Kl.</i> , 155. Band, 2. Abh., 1907).
SKM	Smith, W. R., <i>Kinship and Marriage in Early Arabia</i> , 2nd ed., 1903.
SOH	Smith, J. M. P., <i>The Origin and History of Hebrew Law</i> , 1931.
SUA	Schorr, M., <i>Urkunden des Altbabylonischen Zivil- u. Prozessrechts</i> , 1913.
ZA	<i>Zeitschr. für Assyriologie.</i>
ZAW	<i>Zeitschr. für die Alttestamentliche Wissensch.</i>
ZDMG	<i>Zeitschr. d. Deutschen Morgenl. Gesellsch.</i>

THE BASIS OF ISRAELITE MARRIAGE

I. PROBLEM, MATERIALS, AND METHOD

1. *The Problem.*

For many interpreters of Hebrew life and custom the subject of this inquiry presents no problem. To them it seems plain that Israelite marriage was an economic transaction, a matter of purchase and ownership.¹ Others, however, emphatically deny this, though not always agreeing among themselves as to the real basis of Israelite marriage.² By way of evidence for marriage by purchase as the basic form of marriage among the Israelites it is pointed out that words meaning "buy" and "sell" and others denoting ownership are used in the Old Testament in connection with marriage, that an apparently essential element in the transaction was the payment of a sum (the *mohar*) by the bridegroom to the father of the bride, and that the wife's part in the whole affair was distinctly that of object rather than subject. Against purchase-marriage are urged the relatively independent position of the Hebrew wife, the sharp distinction between wives and slaves or even concubines, the prophets' use of marriage as a symbol of the covenant between Yahweh and his people, implying a free agreement between the two parties, the fact that a married woman did not lose all connection with her father's family, and the fact that the father of the bride, while receiving a *mohar* from the bridegroom, also gave his daughter a dowry (*šillūhim*) and therefore did not merely exchange value for value. It is also urged that marriage was an older institution than sale, from which it therefore cannot have been derived. Various explanations of the *mohar* as something other than a purchase-price are offered: e. g., as a compensation for the bride's loss of her virginity (*pretium pudicitiae*), as an earnest or pledge guaranteeing the fulfilment of the marriage-contract, or as a fund to provide for the wife in case of divorce or her husband's death. This rapid review of some of the principal argu-

¹ So, for example, the classical works of Benzinger and Nowack on Hebrew archaeology (BHA, NHA). For a more recent statement, without discussion, cf. R. H. Kennett, *Ancient Hebrew Social Life and Custom*, 19 f. Eberharter names a number of ethnologists and biblical scholars who have accepted the purchase-marriage theory (EEF 100).

² Cf. especially NBG, EEF, EWB, and more recently DMAL and DMI. Eberharter, loc. cit., mentions also earlier biblical scholars (no ethnologists!) who have opposed the theory of marriage by purchase.

ments on both sides of the question will suffice to show that the problem is a complex one and that the evidence and the arguments based upon it still call for a thorough and impartial investigation.

2. *Methodological Presuppositions.*

It is not to be expected that a simple and consistent picture can be drawn which will be true to every period of Hebrew history, to say nothing of prehistory. We must allow for development, with the possibility of profound alteration and reinterpretation from age to age. Just as between the Old Testament and the Talmud much development took place, so too within the thousand years and more represented by the Old Testament itself society was not static, and the earliest picture given by the Old Testament may be already far removed from the ideas and practices which were normative for the beginnings of Israelite culture. Our question is not whether the Israelites always practiced marriage by purchase throughout their history, but whether they ever practiced it or ever had practiced it, and particularly whether it was the original basis of Israelite marriage, or, if not, what was the basis.

To say this is not to imply that origins are more important than later developments and modifications. For many purposes origins are irrelevant if not misleading. The probability that many of our mourning customs, for example, go back to primitive man's fear of the ghost affords no basis for estimating their present value and significance. On the other hand, if we would explain how such institutions as marriage and sale are related to each other, when both are already present in the earliest historic periods, we must go back to prehistoric times and take seriously the question of origins. In other words, we must dig through the level of our Old Testament records and look below it for the prehistoric roots of Israelite custom.

We cannot, however, begin our excavation at the bottom of the mound. Our inquiry must proceed from the known to the unknown, from the historic to the prehistoric. The problem is not to be approached by way of a theoretical reconstruction of primitive marriage in general or even of prehistoric Semitic marriage. Fortunately what was the prehistoric period for Israel was a relatively late historic period for some of the neighboring peoples, and we have abundant documentary evidence of their ideas and customs. Hence, in addition to reasoning backward from what we know about later Israel, we may reason laterally, so to speak, from what is known of contemporary peoples. Here, too, of course, we must consider not only what was true in the times from which our sources come, but also what indications these sources give us as to earlier ideas and practices. In other words, our reasoning cannot

be merely lateral, drawing lines from the other cultures to that of Israel; it will consist rather in tracing lines backward from all of them and trying to find whether these lines tend to converge toward a common point in the unknown past.

3. *The Materials and Their Significance.*

Aside from the rather scanty evidence of the Old Testament itself, by far the most important material for our purpose is the great body of cuneiform documents in various dialects of the Akkadian language. This includes, first, the Babylonian sources, especially the Code of Hammurabi and the Old Babylonian marriage-contracts. Later documents show something of the subsequent development of Babylonian conceptions and customs. The mixed Hurrian and Semitic culture of northern Mesopotamia five or six centuries later than the time of Hammurabi is brilliantly illuminated by the tablets from Nuzi. For Assyrian ideas and practices we have in particular the Old Assyrian texts from Cappadocia and the later Assyrian Code of Laws. On the whole the Assyrian sources reflect the Babylonian system with some modification.³ For comparison, though less immediately relevant, there is also the Hittite Code, exhibiting a social system independent of the Babylonian in origin, though subject later to more or less influence from Babylonia and Assyria.⁴ Finally, as we shall see presently, we have a bit of evidence now in the tablets from Ras Shamra.

These materials are much more extensive than those from ancient Israel. Instead of the few incidental allusions to the *mohar* in the Old Testament we have large quantities of contracts and laws dealing in specific detail with the *terhatu*, the Babylonian counterpart of the *mohar*.

It cannot be assumed, of course, that the *mohar* and the *terhatu* were identical, nor that everything that was true of the one must have been true of the other. In one of the Ras Shamra tablets, as a matter of fact, the two appear together, and in a way which suggests that they may have been distinguished as different gifts or payments, though the relationship between them is far from clear. The Hymn to Nikkal⁵ deals with the marriage of the goddess Nikkal to the moon-god Yaräh. In

³ KER 280 f.

⁴ Ibid. 293 f.

⁵ Published by Virolleaud in *Syria* xvii. 207-28; translated and discussed also by C. H. Gordon (BASOR 65, pp. 30-33) and René Dussaud (DDRS 81-5), and by A. E. Goetze in unpublished papers before the Semitic and Biblical Club of Yale University and the Society of Biblical Literature and Exegesis (December 1937). See also now the articles by T. H. Gaster, JBL lvii (1938), 81-7, and JRAS, January 1938, which, however, contribute nothing significant for our purpose.

lines 16 f. Yarah sends a messenger to "Ḫrḫb king of summer," and the next two lines quote the message. As read and interpreted by Goetze, it is as follows:

"Deliver Nikkal! Yarah has paid the *trḫ*,^a
But has the girl entered his house?"⁷

The verb *mhr* occurs in the next line, but with a change of subject which Goetze takes as indicating that Yarah here turns to the messenger himself, saying,

"You should bring the *mohar* for her to her father."⁸

This seems to imply that the *terḫatu* has been paid but the *mohar* has not, in which case they cannot have been the same. There is nothing in the form of the verbs, however, to indicate such a change of tense.⁹

^a (17) . . . *tn nkl y(18)trḫ ytrḫ*. 'ibt 'rḫt. bḫh (19) th.

^b (19) . . . *w-āt tmhrh l-a(20)bh*.

^c Both *ytrḫ* and *tmhrh* are "imperfect" in form. Whether they refer to past, present, or future action can be determined only by the context, which in this case is not sufficiently clear to justify a confident judgment. It is possible, therefore, that both verbs refer to the same payment, whether already made or still to be made. Virolleaud, Gordon, Dussaud, and apparently Gaster have all taken both verbs as future. It is equally possible to take them both as referring to past action, since the "imperfect" is regularly used for narrative in Ugaritic (Goetze, "The Tenses of Ugaritic," JAOS 58, 206-309). The *mohar* does not appear again in the poem, but the *terḫatu* is mentioned in lines 26 and 33. In line 26 we have *trḫ*, apparently as a noun (though masculine, whereas the Akkadian term is feminine; cp. Babylonian *serqtu* and Assyrian *serqu*). In the other places the roots *trḫ* and *mhr* appear only in verbal forms, much as *mhr* is used in Exodus 22:15. In line 10 we have a participial form (*kmtrḫt*—cp. the Keret Legend, I. 13). In line 23 the form is the same as in line 18. The verb with which the noun is used in line 26, incidentally, is also an "imperfect," but the time-reference is quite uncertain. The payment of the *terḫatu* seems clearly to be referred to in line 33 as past, but in a way which strongly suggests that it was not so regarded in the previous passages: "After for Nikkal Yarah had paid the *terḫatu*" (sc. as he had promised in line 18), unless we accept Goetze's suggestion that successive payments to the mediator and to the father are distinguished (v. i.). The confusion is worse confounded by the fact that the roles of some of the *dramatis personae* are not clear. Yarah is evidently the bridegroom and Nikkal the bride. The bride's father would appear from line 27 to be Baal. The position of Ḫrḫb, however, is puzzling. He may be the bearer or the recipient of Yarah's message, according as the preposition 'm in line 16 means "to" or "by." According to line 19 he (or the messenger sent to him) is to convey (or has conveyed) the *mohar* to Nikkal's father. In lines 18 and 33 Yarah has paid (or will pay) the *terḫatu*, but in line 26 Pdr appears as the payer of the *terḫatu* (as middleman?). The *terḫatu* is referred to in the Keret legend also, but not in such a way as to throw further light on its nature. (See now Albright, BASOR 71. 35-40.)

Goetze suggests (in a personal communication) that perhaps the *terḥatu* had been paid to Ḥrḥb as mediator but had not yet been handed over to the girl's father; for Yarah it was a *trḥ*, while for the girl's father it was a *mhr*. That the two words should appear together in this way is extraordinary, to be sure, yet the mixture of cultures abundantly evident at Ras Shamrah may account for the use of both words as synonyms.

At the same time a distinction in meaning is not impossible. If the mingling of cultures had produced a condition in which two related customs had come to exist side by side, it is conceivable that the bridegroom's gift to the father of the bride may have been divided into two instalments, one being given at the time of betrothal and the other at the time of the wedding.¹⁰ Since the two combined cultures provided two different names for such a gift, one name may have been used for the first instalment and the other for the second. Be that as it may, the obscure and uncertain indications of this interesting but tantalizing document from Ras Shamra cannot outweigh the fact that so far as we can determine the use and significance of the *mohar* in Israel and the *terḥatu* in Mesopotamia, they are at least very closely related. Just what the relation is will require more discussion.

Unfortunately the nature of the *terḥatu* itself is not as clear as we should wish. The very abundance of the material tends to obscure the main lines of the picture. The *terḥatu*, like the *mohar*, was clearly a sum of money (or its equivalent in goods) given by the bridegroom to the father of the bride in connection with marriage or betrothal. Its purpose and its bearing on the nature of marriage, however, are much disputed. Koschaker maintains that marriage was essentially *Kaufehe* among the Babylonians, Nuzians, and Assyrians alike.¹¹ David is willing to use the terms "bride-price" and "purchase-marriage," but with emphatic reservations, holding that neither in form nor in substance can marriage as practiced by the ancient peoples of Western Asia be identified with purchase.¹² Driver and Miles deny that the *terḥatu* was or ever had been a purchase-price.¹³ Neubauer accepts Koschaker's position with regard to Babylonian marriage but denies that the Israelite *mohar* was a bride-price,¹⁴ while Cuq thinks the *mohar* was a bride-price but the *terḥatu* was not, though it had been so originally.¹⁵

¹⁰ Cp. the similar division of the Arab *mahr* and the distinction between betrothal-gift and *ketubbah* in Talmudic Judaism (v. i., pp. 44, 62 n.).

¹¹ KRS 111-214. But v. i., p. 28, n. 70, regarding Koschaker's conception of purchase-marriage.

¹² DVW 11-16.

¹³ DMAL 143 ff.

¹⁴ NBG 24n, 37 and n.

¹⁵ CED 24-42.

In view of all this diversity of views the material will have to be discussed at some length before we can use it for our purpose. Unfortunately this will carry the inquiry beyond the limits within which the present writer can claim to speak with any authority. By the nature of his problems the biblical scholar is often compelled to lengthen his cords and strengthen his stakes to such an extent that the stakes must be driven in fields belonging to his neighbors. He can only hope that his ropes will not get in their way, and that they will graciously help him to make sure that the soil in which his stakes are driven will hold firm. In the present instance the writer has consulted competent scholars in the fields concerned and endeavored with their help to use the best authorities, verifying references and subjecting all arguments to critical examination.^{15a}

We have still to consider what relation the practices attested by the Akkadian sources had to Israelite marriage. It goes without saying that for our purpose the significance of the customs of other peoples than the Hebrews is in direct proportion to the nearness of these peoples to the Israelites chronologically, geographically, and racially. Even the closest parallels, as such, can at most establish more or less definite grades of probability, for it will always remain possible that the earliest customs and conceptions of the Israelites differed from those of even their nearest neighbors and kinsmen. Unless a definite connection can be shown, the greatest service to be expected of any parallel will be to confirm or increase the probability of what is independently indicated by the biblical evidence, or to tip the beam in favor of one or the other alternative where the biblical evidence is ambiguous. Unquestionably Israel had many contacts with Babylonia, both indirectly, through the Canaanites, and directly. How early and of what nature the earliest contacts were, we cannot say. The racial origin of the Hebrews and the historical significance of the story of Terah's migration from Ur are too much in the dark as yet to afford a *pou sto* for our argument. Since Israelite culture in any case was much younger and in some respects always more primitive than Babylonian civilization, the Israelite marriage customs may have been based on a type of social order which the contemporary Babylonians had long outgrown. The Babylonian sources are therefore useful, not as evidence of the immediate derivation of

^{15a} I take pleasure in acknowledging here my special obligation to my colleagues, Professors A. E. R. Goetze (Assyriology) and G. P. Murdock (Ethnology), who have read my manuscript and made many valuable suggestions. I am indebted also to Prof. E. A. Speiser for similar assistance and editorial supervision. Of course I alone am responsible for any errors I may have committed.

Israelite customs, but rather as an aid in getting back to more primitive practices from which both Babylonian and Israelite customs may have been derived.

Even such a common ancestry is not certain. The similarities may be due to cross-fertilization. Thus, if the Babylonians practiced purchase-marriage, apparent reflections of this practice in the Old Testament may conceivably represent only deviations from true Israelite custom under Babylonian influence. This applies equally to the other neighboring peoples. For example, Laban may have "sold" his daughters because marriage by purchase was practiced in Mesopotamia. Shechem may have offered to buy Dinah because the Canaanites practiced marriage by purchase. Moses may have paid for his wife by service because that was a Midianite custom.¹⁶ On the whole, however, while the possibility must be recognized, the close racial and cultural affinities between Israel and other Semitic peoples—not precisely definable, to be sure, but none the less certain and important—make the probability of such separate social origins very slight.

On one point there is no disagreement. Canaanite influence was unquestionably important and far-reaching in Israelite life. It is significant therefore that the *mohar* was plainly a Canaanite institution. The evidence of this may be given here very briefly. The offer of Shechem in Genesis 34:12 is not conclusive: it suggests that the pre-Israelite inhabitants of Shechem knew the *mohar*,^{16a} but it is possible that the Israelite narrator wrongly assumed this, or that Shechem merely meant to express his readiness to abide by Israelite custom. The law of Exodus 22:15 is more important, for the Book of the Covenant was probably based on a Canaanite law code;¹⁷ moreover this particular law is a typical example of the "casuistically formulated" laws which Alt has shown to be of Canaanite origin.¹⁸ The final proof is now given by the fact, already noted and discussed at some length above, that the verb *mhr* appears in a text from Ras Shamra.¹⁹ That the *mohar* was a Canaanite institution is therefore quite certain.

That it was exclusively or peculiarly Canaanite does not follow. The name appears not only in Aramaic (*mukhrā*) and Syriac (*mahrā*), where there is a bare possibility that it was merely taken over from Hebrew;

¹⁶ So EEF 107-110.

^{16a} According to Genesis 34:2 (LXX), Shechem was of Hurrian origin (cf. Speiser, *Ethnic Movements in the Near East*, p. 29).

¹⁷ Cf. L. Waterman, *AJSL* 1921, pp. 36 ff.; Olmstead, *History of Palestine and Syria*, chap. 8.

¹⁸ A. Alt, *Die Ursprünge des israelitischen Rechts*, pp. 12 ff.

¹⁹ V. s., pp. 3-5.

it is familiar also in Arabic (*mahr*), and in connections where Jewish influence is out of the question.²⁰ In the light of these facts the evidence for the Canaanite use of the *mohar* suggests not so much a practice which was learned by the Israelites from the Canaanites as one that was shared by all the Semitic peoples and derived from their common ancestors. The particular law given in Exodus 22:15 f. may of course have been taken over from the Canaanites. This would be all the more natural if it was essentially in accord with a familiar Israelite custom.

On the whole the picture presented in all the sources, with due allowance for local and national peculiarities, is that of a fairly homogeneous social order throughout the Semitic world.²¹ The assumption of a common origin for institutions so widespread and similar as the *mohar* and *terhatu*, therefore, is not unreasonable. Be that as it may, we do not find in any of the extra-biblical sources the immediate derivation of Israelite customs. What we do find is the general framework within which, if at all, our problem must find its solution.

In the nature of the case, no solution can be conclusively demonstrated, since evidence for the actual origins of the *mohar* and *terhatu* in prehistoric times cannot be secured. The most to be expected will be an hypothesis which is compatible with all the known facts, which offers a reasonable explanation of them, and to which no insurmountable objection can be found.

4. *Plan of Presentation.*

While the process of seeking such an explanation must be inductive, it seems expedient for the purposes of exposition to state first the conclusion to which the present writer has been brought by his study of the evidence. In the following pages, therefore, the thesis will first be presented. The attempt will then be made to show that the arguments for marriage by purchase support equally well our hypothesis, and also that this hypothesis is free from the objections which may reasonably be brought against the theory of purchase-marriage. Finally, other interpretations proposed for the *mohar* and *terhatu* will be examined and shown to be unsatisfactory.

²⁰ Cf. SKM 93, 105; Wellhausen, NKGW 1893.

²¹ So DVW 3.

II. THESIS

1. *The Primacy of the Family.*

In ancient society marriage was not merely or even primarily the concern of the few individuals most immediately involved. It was the concern of the family, the clan, and the tribe. The purpose of marriage, as conceived by all the peoples of the ancient Near East, was to ensure the survival of the family by providing male successors.¹ What Miss Granqvist says of marriage among the Palestinian *fellāḥīn* today applies equally to the Israelites and the other ancient peoples of Western Asia: "It is not so much an affair of the individual as an affair of the family."² So Lévy-Bruhl says of primitive peoples in general, "the individual is of importance only in so far as he is a member of a group."³ Chatila has shown clearly the primacy and solidarity of the pre-Islamic Arab family, the effort of Mohammed to substitute a religious solidarity for the divisive solidarity of separate families, the struggle of the two principles in Islam, and the persistent power of the family to this day.⁴ The primacy of the family among the Arabs, as Chatila observes, explains the prominent role of the parents in arranging marriages, even when the bridegroom and bride have reached maturity.⁵ This was equally true in ancient Israel. Pedersen remarks that Abraham took the initiative in Isaac's marriage, and even Samson got his wife through his father's mediation.⁶ The family, not the individual, was primary.

2. *The Woman's Value for the Family.*

Woman was a valuable and valued member of ancient society. She was valuable in the first place, of course, as a mother. The mothers and potential mothers of a group represented its future fighting strength.

¹ EER 281.

² GMC i. 53.

³ LBA 103; cf. chap. III, part III, throughout.

⁴ CMM 32-108.

⁵ Ibid. 36. Dussaud maintains that in Israel the man's family selected his first wife but allowed him to take others of his own choice, the danger that the beloved wife might supplant the one chosen by the family being guarded against by the law of Deuteronomy 21:15-17 (DMI 144). The substitution of Leah for Rachel is likewise attributed by Dussaud to the family's choosing the first wife and allowing the man to take another to his liking (ib. 148). But it was not Jacob's family which chose Leah for him; it was her father.

⁶ PI 67. Incidentally Pedersen also points out that polygamy naturally goes with the fact that it is the husband's family which is to be continued (ib. 70).

Women were valuable as workers also. Miss Granqvist, while maintaining that the *mahr* is primarily a compensation for taking a girl from her home to "build up" another "house," records the fact that it also compensates her family for the loss of her service in house and field; hence also "bribes" are given to her brothers.⁷ Chatila observes that while a man's parents like a wife for him who is young enough to be plastic in character, the fact that heavy work is expected of her tends to prevent marriage at too tender an age.⁸ One of the reasons for seeking to keep a widow in her husband's family is undoubtedly that her labor is an economic asset.⁹ Still other considerations may come into play. A *fellāh* family feels humiliated when the widow of one of its members returns to her father's house or marries into another family, taking with her what she has received from her former husband.¹⁰ Property and inheritance are involved in other ways also. Cousins are preferred as husbands among the Arabs because the property is thus kept in the family, as in Numbers 27.¹¹ In other words, a woman is not only a potential mother and a worker, but may also, at certain stages of social development, have personal property of her own which is a part of the wealth of the family to which she belongs. These considerations, however, can hardly be regarded as important for the question of origins. The primary fact is that a woman was always a valued member of the group, in the first place as a potential mother, and in the second as a worker.

3. *The Principle of Compensation.*

In view of this fact, it is not surprising to find that among many peoples a group which gives up one of its women to another group in marriage expects in return a woman from that group. Among the present-day *fellāhīn* of Palestine marriage by *badal* (exchange) is not uncommon: instead of paying a *mahr* a man may give his sister in marriage to a brother of his bride.¹² Here, of course, it is possible that the practice, instead of being a survival of primitive customs, is simply a substitute for the payment of the *mahr*. Having a marriageable sister, and wishing to save himself unnecessary expense, a man might naturally propose such an exchange. Marriage by exchange is too common among other peoples, however, to be explained so easily. Lévy-Bruhl quotes a number of writers attesting the custom among many uncivilized or semi-civilized peoples, and concludes: "Thus in these

⁷ GMC i. 133 f.; cp. SKM 96 f.

⁸ CMM 26-8.

⁹ GMC ii. 299-302.

¹⁰ GMC ii. 306.

¹¹ Ibid. i. 77 f.; CMM 91-3.

¹² GMC i. 111.

societies, except in cases where a group procured wives by violent measures, or raids upon their neighbours, what we call marriage usually involved originally an exchange of woman for woman between exogamic clans."¹³

As the primary conception underlying the exchange of women between groups Lévy-Bruhl stresses the principle of "reciprocity" and "compensation."¹⁴ Since the women of a group, as potential mothers, represent fighting strength, the equilibrium between groups is disturbed when a woman is given to another group. To maintain this equilibrium there must be a fair exchange. Chatila points out in this connection that in blood-revenge the same conception is operative. One member of a family may be substituted for another, and there may even be pecuniary "composition," but some acceptable compensation is imperative.¹⁵ From this point of view we may apply to the *terhatu*, *mohar*, and *mahr* what Junod says of the South African *lobola*: in marriage one family loses and the other gains a member; the former group therefore receives the *lobola* as a compensation, enabling it to acquire a new member in place of the one it has lost.¹⁶

All this suggests that the origins of the *mohar* and *terhatu* may go back to a time when sale and purchase had not been developed out of the practice of barter. Thus Frazer has suggested that exchange-marriage originated in the practice of barter among peoples who had no developed ideas of private property.¹⁷ Lévy-Bruhl holds that the practice of exchanging women lies back of marriage by purchase; the payment of a bride-price, he suggests, arose when there were not enough women to exchange.¹⁸ As a matter of fact, an even more primitive basis than barter seems probable.

4. *The Significance of the Gift.*

The most satisfactory explanation of the *mohar* is to be found in the essential purpose and significance of gifts among the ancient Semites.¹⁹ Here the principle of compensation finds its earliest expression. Barter,

¹³ LBA 101 f.

¹⁴ Ibid. 102, citing Thurnwald.

¹⁵ CMM 34 f.

¹⁶ H. A. Junod, *The Life of a South African Tribe*, i. 121 f.; cited by LBA 99 f. Cf. also the quotation from J. T. Brown regarding the Bantu *bagadi* (loc. cit.).

¹⁷ *Folk-lore in the Old Testament*, ii. 210 f. (ap. GMC i. 117n).

¹⁸ LBA 100-102.

¹⁹ On the gift among primitive peoples in general cf. Mauss, "Essai sur le don," *Année sociologique* 1924-5 (cited by Chatila). It was Chatila's application of this conception to Arab marriage which first suggested to me the theory of Israelite marriage here advocated.

like sale, implies the exchange of equivalent values. The gift does not necessarily involve the idea of equivalence except in a very general way.²⁰ It is simply an object of value presented in order to enhance the prestige of the giver, to express and confirm the social bond between him and the recipient, and to put the latter under an obligation to him. By an extravagant display of generosity a man may seek merely to establish his superiority, but ordinarily a gift has in view some substantial return. Just as it is said that among certain American Indians one who coveted his neighbor's horse simply brought a present and confidently expected in return the object of his desire, so among many peoples the recipient of a gift is as well aware that it calls for a return as if the giver had said frankly, *Do ut des*. Either if not both of two motives may animate such a gift: a desire to please the recipient and win his good will,²¹ or the less admirable wish to humiliate him and incite him to vindicate his honor by an appropriate return.²² In either case the acceptance of the gift creates an obligation.²³ Such conceptions and practices were extraordinarily developed among the Arabs.²⁴ Even alms given to the poor and offerings to the gods and spirits and to the dead belong to this category.²⁵ According to Miss Granqvist, who quotes the proverb, "Who gives not gets not," the Palestinian *fellāḥin* regard all gifts as loans, involving definite obligations.²⁶ One cannot help being reminded of the feelings with which Christmas presents and wedding presents are sometimes given and received among ourselves. Pedersen cites in this connection Proverbs 19:6, "Every man is a friend to him that giveth gifts."²⁷

For the Israelites, as for many other peoples, the significance of the gift was not exhausted by such considerations as these. The gift established a bond not merely by creating good will or a sense of obligation but by actually conveying something of the life of the giver to the recipient. Chatila, quoting Mauss to the effect that primitive man thinks of gifts not as mere objects but as having life mixed with them, says that the pre-Islamic Arabs attributed personality to objects and regarded

²⁰ In practice, of course, the three kinds of transaction shade into one another. Chatila remarks that the use of the same word for sale and purchase in Arabic points back to the fact that gifts preceded economic exchange in the development of social institutions (CMM 147). In view of the frequent occurrence in Arabic of roots bearing pairs of mutually opposite meanings this point cannot be pressed. It is interesting to note, however, that at Nuzi, as Speiser informs me, *qīštu* "gift" comes to mean "purchase price."

²¹ CMM 150 f.

²² Ibid. 148.

²³ Ibid. 143 f.

²⁴ Ibid. 123-38.

²⁵ Ibid. 144-6.

²⁶ GMC i. 129.

²⁷ PI 297.

the nature of the object and the personality of its owner as inseparable.²⁸ Lévy-Bruhl connects the idea that "the individual's property is himself" with the world-wide practice of "enchantment through the appurtenances."²⁹ Pedersen has shown that for Israel as for the Arabs a gift was a communication of "part of the psychic entirety of the man."³⁰ The feeling is entirely comprehensible to any person who has used an object until it seems a part of himself, especially if he has made it and "put himself into it," as we say. From this point of view a gift serves to establish something comparable to a blood-covenant between giver and recipient, and the bond is made complete when there is a fair exchange and compensation. It is easy to see, therefore, that the making of any covenant is naturally accompanied and sealed by an exchange of gifts, expressing and establishing what Pedersen calls the "psychic community" of the parties to the contract.³¹

5. The mohar as a Compensation-Gift.

In such conceptions of the gift the *mahr* and *mohar* and the *terḥatu* as well find their most probable explanation. A marriage is not merely an incidental transaction between the two families; it creates and cements a relationship of alliance between them.³² One family gives a very precious possession, a daughter; the other, "to put things on an equal footing,"³³ gives a valuable present. The *mohar* thus establishes the prestige of the husband and his family, gives him authority over his wife, makes the contract binding on both parties, and creates an alliance between the two families.³⁴ Not that marriage among the early Semites was merely a means to the end of forming such alliances: sometimes (as in "diplomatic marriages," both ancient and modern) that was doubtless the case, but ordinarily the main end in view would be the marriage itself, with its primary purpose of continuing the husband's family. Since this involved getting a woman from another family, however, the formation or strengthening of an alliance between the families naturally followed.

²⁸ CMM 151-7. Not all of Chatila's quotations from the Arab poets are relevant or convincing, but the main point is sufficiently evident.

²⁹ LBA chap. III, part III.

³⁰ PI 290.

³¹ PI, loc. cit.

³² So with respect to the *mahr* GMC i. 43; CMM 157, 162; with respect to the *mohar* PI 67 f., 290 f.; DMI 145.

³³ PI 68.

³⁴ Chatila (CMM 161, 178, 183) finds confirmation of this interpretation in various Arabic words for the *mahr*: e.g., '*ajr*' (recompense), '*alāqah*' (bond, attachment), '*hiba*' (attachment). The last named should probably be *hibah* (gift), from the root *wahaba* (give).

6. *The Relation between Compensation and Purchase.*

The interpretation here offered agrees with the theory of purchase-marriage to the extent that both theories regard the *mohar* as a form of compensation. Dussaud, who applies the idea of compensation to the Israelite *mohar*, fails to see this and consequently gives the principle a curious twist. Referring to the practice of marriage by exchange, he says that when a direct exchange of women is not feasible there must be some substitution to satisfy the principle of reciprocity and compensation.³⁵ So far we may agree with him, but when he goes on to say that this involves the very opposite of the conception of sale, we must emphatically dissent. An exchange of wives, maintaining the equilibrium of the groups by reciprocal compensation, is very closely akin to barter. But barter and sale are obviously related; in fact, sale develops from barter. Apparently Dussaud supposes that reciprocity requires an exchange of values apart from the gift of the bride herself. The play of compensation is shown, he says, by the dowry. Caleb gave his daughter a dowry, and we may be sure (one wonders how!) that Saul did the same for Michal. Laban violated the principle of reciprocity by accepting Jacob's labor but not giving his daughters a dowry.³⁶ But compensation and reciprocity require no such thing: the bride herself is the object for which compensation is required, either by the exchange of another woman or by a gift.³⁷ In marriage by purchase, by barter, and by exchange alike the wife is regarded as an object of value for which another object of value must be given. The principle of compensation, far from being contrary to the fundamental conception involved in marriage by purchase, is closely related to it if not identical.

From this point of view we can understand the close relationship between marriage and purchase in historical times. While not originally a purchase-price (being older than sale and purchase), or even necessarily an exact equivalent of the bride in value (as in barter), the *mohar* was regarded as a compensation for the desired gift of the bride. When the system of barter emerged from the system of gifts, and when sale and purchase later evolved from barter, not unnaturally the bridegroom's gift to the father of the bride would be affected in practice and in interpretation. The use of money for the *mohar* or *terhatu* and the stan-

³⁵ DMI 144 f.

³⁶ DMI 147. Dussaud even goes so far as to say that in line 21 of the Ugaritic Hymn to Nikkal the speaker must be the bride's father, even though no change of speaker is indicated, because the preceding mention of the *mohar* calls forth the mention of the dowry in response to it (DDRS 83n)!

³⁷ On the relation between the *mohar* and the dowry see further pp. 41 ff.

dardization of the amount required for the *terḥatu* are examples of this development. With the emergence of private property, moreover, it would not be surprising if the relation between husband and wife came to be thought of in terms of ownership. Neither a raising nor a lowering of the actual social position of woman is necessarily involved in this process.

The differences also between marriage and purchase are comprehensible in the light of our theory. The approximation of the *mohar* to a purchase-price would be prevented from becoming a complete identification by the personal and social nature of the marriage relationship, so that marriage and slavery would always remain clearly distinguished. Before marriage, also, the parental and filial relationship would work in the same direction, preventing what was essentially a personal and social relationship from being entirely taken up into the economic system.

7. Summary.

Our thesis may be briefly summarized. The basis of Israelite marriage was the continuance of the husband's family. This required securing a wife from another family, which had to be induced to give her up, and this was done by a gift, creating an obligation, sealing a contract, and establishing a family-alliance. Other gifts were exchanged and feasts were partaken to strengthen and confirm this alliance. Economic development eventually caused some formal approximation to the system of sale and purchase, but the nature of the transaction remained essentially the same.

III. ARGUMENTS FOR MARRIAGE BY PURCHASE

An examination of the evidence adduced in favor of the theory of purchase-marriage will show that so far as it has any force at all it supports equally well the hypothesis set forth in the preceding chapter. Much of it is significant as confirming the general principle of compensation, but it does not establish any greater probability for the conception of purchase than for the idea of the compensatory gift. Some of it, indeed, goes more naturally with the latter than with the former.

1. *The Meaning of the Words mohar and terhatu.*

For Israel and for the Near East at large what gives the appearance of sale and purchase to marriage is above all the payment of a specified sum of money by the bridegroom to the father or guardian of the bride. Whether it be the *mohar* of the Old Testament, the *terhatu* of the Akkadian sources, or the *kūšata* of the Hittite Code, a payment of this sort appears everywhere in a way which inevitably suggests a purchase-price. We have seen, however, that another interpretation is possible. Our problem is therefore to examine the evidence for the interpretation of the *mohar* or *terhatu* as a bride-price and see whether it admits the explanation of these payments as compensatory gifts.

Unfortunately we can get no clue from etymology as to the meaning of either the Hebrew word *mohar* or the Akkadian word *terhatu*. It was long ago suggested that the root *mhr* was connected with Assyrian *ma'āru* (send), with its derivative *tamirtu*, *tamartu* (something sent, a gift).¹ The root *mwr* (exchange) has been suggested also. The Arabic *muhr* (signet, seal) evokes the tempting conjecture that the *mohar* may have been so designated as the thing which closed and sealed the marriage-contract. Other derivations have been suggested, but all are equally conjectural.

With regard to the *terhatu* we are in much the same situation. Here also many derivations have been proposed, but none is certain. On this point I cannot do better than quote a note kindly furnished by my colleague, Prof. Albrecht Goetze.

The correct form of the word, without any doubt, is *terhatum* with short *a*. The decisive argument (first given by B. Landsberger, OLZ 1924 col. 723 note 6) is furnished by the Middle Assyrian Lawbook where the genitive appears as *te-ir-ḫi-te* (for and from *terḫitim*). I.e. the middle *a* of the word has been

¹ Goetze informs me that *ma'āru* is usually in the Piel, and that its older form is *wa'āru*, whereas *tamartu* comes from the root *amāru*.

modified by the Assyrian vowel harmony. Since it affects only short unstressed vowels, the *a* must be short.

The reading thus established is irreconcilable with deriving the word from *rehûm* (cf. KRS 141, with further references, and now van der Meer, RA xxxi. 121 f. [see also Albright, BASOR 71.38n]). The third radical cannot simply vanish. *Terhatu*, then, can only be explained as *f'î-l-atu* of *trh*; whether this *trh* is a secondary formation that belongs to *wrh* (as *tkl*, represented by Akk. *takûlu*, to *wkl* as exemplified by Arab. *wakala*) is an open question.

Instead of theorizing on the basis of etymologies, it seems preferable to investigate the Sumerian equivalents of *terhatum*. It may be assumed that the institution existed already with the Sumerians and like so many other things was taken over by the Semites, or, at least, that a Semitic institution corresponded to one of the Sumerians. There exist two Sumerian equivalents of *terhatum*: 1) *kù.dam.tuk* (series *ana ittišu*, in Landsberger's new edition 7 II 42 f.; cf. also DVW 30, note 78). The word, in contradistinction to *kù.dam.tag*, "silver for divorcing a wife," seems to mean "silver for getting a wife." The expression *dam.tuk.a* is explained elsewhere K 4323 CT XVIII 30 I 14) as *ba-a-rum šá dš-šá-ti* "*hārum* in speaking of a housewife"; *hārum* in the Hammurabi Code and in Old Babylonian documents is the term which is used technically for the marriage contract that a father concludes on behalf of his son (KRS 126 ff.). The verb *tuk* is a more general term than "buy," it means "acquire." 2) *nīg.SAL.ús.sa*, glossed *nīg.mu-us-sa*, i.e. *SAL* is to be read *mī*, this being the normal reading of the ideogram whenever it means "woman." M. David (DVW 20) explains this as "Verschwägerungsgeld," expressing the opinion that its purpose is to constitute a fund which may protect the woman in case of divorce or widowhood. Cf. also the summary in the long pertinent note, rejecting van der Meer's arguments, in *Revue d'Histoire du Droit* xiv (1934), pp. 8 ff., where David adds that *mī.ús.sa* is found "in einer ganzen Reihe von Verwandtschaftsbezeichnungen . . . , die alle das Verhältnis von Schwiegersohn, -vater etc. betreffen." I know only of *mussa* equalling Akk. *emu ṣeḫru*, literally "little *emu*" (as against *emu rabû* the "great *emu*") (Delitzsch, *Sum. Glossar* p. 57). If the two words denote the "son-in-law" and the "father-in-law" respectively, the *nīg.mussa* in question literally means "that (*nīg*) of the son-in-law." It should be mentioned that the Emesal dialect of Sumerian in our word replaces *SAL = mī* by *mullu*, the dialect word for "man."

It must be concluded that neither the Semitic word nor its Sumerian equivalents offer decisive arguments for the original juristic significance of the *terhatum*.

Usage is at least as important as etymology and often more easily established, but unfortunately the passages in which the *mohar* is expressly mentioned in the Old Testament do not make clear its significance. If they did, we should of course have no problem. There are only three such passages. In Genesis 34:12 Shechem says to the father and brothers of Dinah, "Make very great for me *mohar* and gift (*mattān*), and I will give whatever you say, but give me the girl as my wife." Exodus 22:15 f. (in the Book of the Covenant) uses both the

noun and its cognate verb with reference to the penalty for the seduction of an unbetrothed virgin: "He shall surely *mhr* her as his wife; if her father refuses to give her to him, he shall weigh out silver according to the *mohar* of the virgins." The parallel passage in Deuteronomy 22:28 f. does not use the word *mohar* or the cognate verb but says that the seducer shall pay the girl's father fifty shekels and marry the girl. We shall return to this passage later and may therefore be content here with noting the fact that the verb *mhr*, with this meaning, does not occur elsewhere in the Old Testament, unless in the extremely doubtful case of Psalm 16:4, "they who *mhr* another god," which at best is too obscure to be of any use for our purpose. We have already seen that this verb appears in the Ugaritic Hymn to Nikkal. Unfortunately this text also, though undoubtedly referring to the *mohar*, is very obscure.

Since Shechem had violated Dinah, his proposition to her father and brothers comes under the law of Exodus 22:15 f. Neither Genesis 34:12 nor Exodus 22:15 f., therefore, necessarily indicates that the *mohar* was a regular element of normal marriage, though the expressions "*mhr* her for himself as wife" and "the *mohar* of the virgins" probably imply this. The third passage involves no previous seduction. In 1 Samuel 18:25 Saul sends word to David, "The king has no desire for a *mohar* except for a hundred foreskins of the Philistines." Here the necessity of giving a *mohar* for a normal marriage is clearly assumed.

A few other passages may be mentioned in which the *mohar* is not mentioned by name but the husband is said to have given or done something to gain his wife. How far these gifts and performances represent the *mohar*, to be sure, is debatable. Abraham's servant gave "precious things" (*migdānōt*) to Rebekah's brother and mother as well as jewels to her (Genesis 24:22, 47, 53). It is quite possible to regard all these as merely complimentary presents or as a part of the formality of sealing the alliance between the families. (The attempts of commentators to distinguish more than one stage of social progress in this narrative through source-analysis may here be left out of account, since they do not contribute anything significant for our purpose.) Jacob served Laban seven years for each of his wives.² Othniel won his wife by capturing Kiriath-sepher,³ much as David won Michal by slaying a hundred Philistines.⁴ In such cases Neubauer sees only the familiar romantic motive of the hero who wins a princess by deeds of daring,⁵ but David's

² Gen. 29. Moses also kept his father-in-law's flocks (Ex. 3:1), but it is not stated that he did this to get his bride.

³ Joshua 15:16 f.; Judges 1:12 f.

⁴ 1 Sam. 18:23-7.

⁵ NBG 203 f.

exploit is expressly designated as a substitute for the *mohar*. In other cases nothing is said of the *mohar* or anything resembling it, though it may well have been taken for granted when there was no particular reason for mentioning it.

In place of the three passages in which the *mohar* is mentioned we have many laws and contracts dealing with the *terhatu*. Unfortunately, as we have already seen, this abundant material does not provide a clear picture.⁶ The very fact that opinions differ among the best authorities shows that the question is far from simple. The sources cannot all be examined here, but we shall frequently have occasion to refer to them. All that can be said here is that neither etymology nor usage reveals clearly the nature of either *mohar* or *terhatu*.

2. The Decisive Moment in the Transaction.

One point is clear: it was the payment of the *terhatu* which closed the transaction and established a binding contract. M. David, while insisting upon the differences between marriage and purchase, says that they have in common the fact that it is not the delivery of the object or the bride but the payment of the money which is decisive.⁷ Ebeling observes that the bride is called a wife from the moment when the *terhatu* has been paid,⁸ and Koschaker remarks that by the Assyrian law the acceptance of the *biblu* or *zubullu* makes the contract binding.⁹ Chatila, writing of the Arabs, quotes V. Müller to the effect that among the bedouins today the payment of the *mahr* "consacre le droit du mari."¹⁰

In the Old Testament also this seems to be the case. Some passages, to be sure, suggest that the physical consummation of the union was what established the marital relationship.¹¹ In the story of Isaac and Rebekah we read, "Isaac brought her into his mother Sarah's tent, and he took Rebekah, and she became his wife."¹² The verb "take" (קָחַ) is used elsewhere also with reference to marriage.¹³ This proves nothing, however, for a father or mother might "take" a woman as wife

⁶ V. s., p. 5.

⁷ DVW 10, 15.

⁸ EER 232. V. i., p. 69, note 85

⁹ KER 287, *re* AC § 30. (On the relation of the *biblu* and *zubullu* to the *terhatu* v. i., p. 68.)

¹⁰ CMM 190, quoting V. Müller, *En Syrie avec les Bédouins*, 228.

¹¹ Neubauer argues that originally the *traditio puellae* and the *copula carnalis* effected marriage among the Hebrews (NBG 160).

¹² Gen. 24:67.

¹³ E. g., Gen. 4:19; 1 Sam. 25:40-43. So regularly Akkadian *aḫāzu* (v. i., p. 24).

for their son, or a servant for the son of his master.¹⁴ The idiom "to become a man's" (היה לאישה) is used in Leviticus 21:3 to express the loss of virginity, and occasionally elsewhere it seems to refer particularly to the physical relation;¹⁵ it is also, however, used more generally for marriage¹⁶ and therefore has no particular significance for the question in hand. A captive woman apparently could be married merely by physical union, after allowing her a month to mourn her parents,¹⁷ but she was already in the possession of the man who wished to marry her. It is interesting to note that the Assyrian Code (§ 41) similarly provides for the marriage of a soldier and his concubine by mere public declaration. That the consummation of the union was the decisive act in legally establishing marriage under normal circumstances is not indicated by any of these passages.

One may say, to be sure, that what the *mohar* effected was not marriage but betrothal. It is true that the Old Testament distinguishes betrothal from marriage. Deuteronomy 20:7 provides that a man who has "betrothed a wife but not taken her" shall not be required to go into battle, "lest he die in battle and another man take her." One of the curses pronounced in Deuteronomy 28 is this: "You will betroth a wife and another man will lie with her" (v. 30). It is significant, however, that the violation of a betrothed virgin is, like adultery, a capital offense, and the law explicitly calls the girl the wife (*'iššāh*) of her fiancé,¹⁸ as in Babylonian and Assyrian law (v. s.). This suggests that betrothal legally constituted the marital relationship, as it did later in Talmudic times.

In one passage the *mohar* is explicitly connected with betrothal. David sends word to Ishbosheth, "Give up my wife, Michal, whom I betrothed for myself with a hundred foreskins of the Philistines."¹⁹ Comparison with 1 Samuel 18:25 shows, as we have already observed, that the exploit referred to took the place of the customary payment of a *mohar*; the statement here indicates therefore that it was this payment which closed the contract and established the engagement. This fits the etymology of the Hebrew verb *'āras* (betroth), which is doubtless related to the Arabic *'ars* (fine) and the Assyrian *mirsu* (tribute). The very

¹⁴ Gen. 21:21; 24:4, etc.; Jer. 20:6.

¹⁵ E. g. Ruth 1:12; Hosea 3:3.

¹⁶ Deut. 24:2; Judges 14:20; Jer. 3:1; Ezek. 10:8.

¹⁷ Deut. 21:10-14.

¹⁸ Deut. 22:23 f.

¹⁹ 2 Sam. 3:14. Critics, on insufficient grounds as it seems to me, have regarded this as a gloss. Even so, the glossator's conception would be significant for our purpose.

word used for betrothal thus suggests that it was essentially a matter of making a payment. The use of the verb *mhr* in Exodus 22:15 comes to mind in this connection: "he shall surely *mhr* her for himself as wife."²⁰

The *terḥatu*, like the *mohar*, was often, if not usually, given in advance of the *traditio puellae*, so that here too it may be said that only betrothal was effected by the gift. Driver and Miles object to the term "betrothal," arguing that Babylonian and Assyrian law do not recognize betrothal in the modern sense as a legal transaction.²¹ Instead of "betrothal" Driver and Miles suggest the term "inchoate marriage"²² for what was effected by the *terḥatu*. The marriage was completed, they say, by the physical union of the couple, and the *riksu* (bond, certificate) proved that this had taken place.²³ Koschaker, however, while admitting that Babylonian law knows no formless betrothal (i. e. a mere agreement to give and receive the bride),²⁴ denies that the law ever regards the consummation of the marriage as decisive.²⁵ The relationship established by the payment of the *terḥatu*, whatever we may call it, was a binding legal relationship. It differed from marriage, however, in that it could be dissolved without divorce. The law provides that if the bride has not been "given" the engagement may be broken, with forfeiture of the *terḥatu*. Koschaker is therefore justified in distinguishing between betrothal and marriage, yet insisting that marriage was merely the fulfilment of an obligation created by betrothal.²⁶

Whatever terms we employ, we may say that in Babylonia and Assyria, and in the Old Testament as well, the delivery of the bridal gift sealed the marriage covenant and established the bridegroom's right to his bride, whether or not the marriage was actually carried out at the same time. In other words, the payment of the *mohar* or *terḥatu* was the decisive moment in the transaction. For those who maintain the theory of marriage by purchase this means that from the time when the *mohar*

²⁰ Hosea 2:21 f. (Eng. 19 f.) has sometimes been cited in this connection. Yahweh is here said to have betrothed Israel "with righteousness and with justice and with loyalty and with mercy." But, while the same preposition (ב) is used as in 2 Sam. 3:14, the divine qualities named do not represent a *mohar* given by Yahweh for his bride (contra Brown-Driver-Briggs, *Heb. Lex.*, s. v.; cp. now Heschel, *Die Prophetie*, p. 60). The phrases here are not instrumental but purely adverbial, as, for example, in Ps. 98:9, "He will judge the world with righteousness and the peoples with equity."

²¹ DMAL 145, 155, 166.

²² KRS 134 f.

²³ Ibid. 166 f.

²⁴ Ibid. 141.

²⁵ Ibid. 172.

²⁶ Ibid. 148 f.

was given the wife was her husband's property, and therefore the *mohar* was a purchase-price. Whether such an inference can be justified depends on other factors yet to be considered, but the decisive character of the payment is equally well accounted for by the theory of the gift which creates an obligation.

3. *The Real Value of the mohar and terḥatu.*

That the *mohar* was a bride-price is sometimes inferred from the fact that it was plainly no nominal amount, nor was the payment of it a merely formal act. The betrothal-gift of Talmudic Judaism was of only nominal value: the followers of Hillel said that anything worth a *perūṭah* (the smallest copper coin) was sufficient.²⁷ The biblical *mohar* and the *terḥatu*, however, were of considerable value,²⁸ as is still the Arab *mahr*. The daughter's *mahr* in a *fellāh* family is an important resource for the payment of debts and the like,²⁹ and a widow who does not wish to remarry is required to give her brother an amount equal to the *mahr* she would bring him if she married.³⁰ It is true that in Babylonia the amount of the *terḥatu* was often too small to be considered an equivalent of the woman's value. This fact will have to be considered under the head of arguments against marriage by purchase.³¹ Without anticipating the result we may say that again the real value of the gift is as favorable for our hypothesis as for the theory of marriage by purchase. To be in any sense a compensation for the loss of the girl the gift had to be of some value.

4. *Adoption for Marriage or Concubinage.*

That what may be called marriage by purchase was known and practiced in Israel as a lower and secondary type is admitted even by scholars who deny that purchase was the basis of normal Israelite marriage.³² Exodus 21:7-11 regulates the treatment of a woman who has been sold by her father as a bondwoman (*'āmāh*), with the evident presupposition that the purpose of the transaction is marriage or concubinage,³³ either with the purchaser or with his son. If the girl is "appointed" to the son of the purchaser, the latter must treat her as a daughter. If he

²⁷ Mishna Qidd. 1.1.

²⁸ So DVW 17.

²⁹ V. i., p. 40.

³² So Eberharter (EEF 124) and Dussaud (DMI 143).

³³ The verb used is *yā'ad* (appoint, designate). This verb and the noun *yī'ād* are used in the Talmud (on the basis of our passage) for the betrothal of a bondwoman as distinguished from that of a freewoman. For the latter *qaddēš* and *qiddūš* are used.

²⁹ GMC i. 135; cp. SKM 96.

³⁰ GMC ii. 301 f.

takes her for himself and later takes another woman, he must continue to give her food, clothing, and marital rights; otherwise he must give her her freedom. But her position differs from that of a Hebrew man bought as a slave. Whereas he "goes out" (i. e. is freed) after seven years (unless he renounces this right), she does not "go out according to the going-out of slaves" (v. 7), doubtless because morality demanded permanence for the sexual relationship.³⁴ The purchaser is expressly forbidden to sell the girl to a "foreign people"; if he does not want her for himself or his son, he must allow her to be redeemed. So, according to Leviticus 25:39, 42, the purchaser of a Hebrew man must not "en-slave him with the slavery of a slave," and Deuteronomy 24:7 condemns a man who steals a fellow-Hebrew and "treats him harshly or sells him."³⁵ In spite of these conditions, however, such a woman is still a servant (*'āmāh*), not a wife (*'iššāh*).

The Akkadian sources attest the closely related practice of adopting a girl as daughter-in-law. Such an adoption might mean that the girl was actually destined for a son of the adopter, but a man might also adopt a girl "for daughtership" (*ana martūti*) or "daughter-in-lawship" (*ana kallatūti*) or for "sistership" (*ana aḥatūti*), and then give her in marriage to another man.³⁶ There is nothing to suggest that the status of a girl so adopted and married was any lower than that of one given in marriage by her own father. At Nuzi women as well as men might be the principals in such transactions, which were often plainly of a purely commercial nature. The veritable marriage-market of the woman Tulpunnaya³⁷ shows to what lengths this practice could go.

It is true that the adopter sometimes paid the girl's parent as much for her as he would receive from her future husband. Koschaker³⁸ raises the pertinent question what the purpose of adopting a girl in this way would be under such circumstances. He finds the answer in the analogy of the Greek *psychokorē*, a young girl taken into the household as a servant, generally without pay, but with the obligation to provide

³⁴ Similarly a woman captured in war and taken to wife by an Israelite could not be "sold for money" nor "treated harshly," because she had been "humiliated" (Deut. 21:14). For a different interpretation see I. Mendelsohn, JAOS lv. 190-5.

³⁵ It is interesting to find the same verbs here as in the case of the captured wife (cf. note 34).

³⁶ Koschaker (KF 13 ff.), who is followed by Korošec (KER 297), regards adoption "for sistership" as a vestige of fratriarchy. It is at least interesting to observe that a woman might also give a brother in adoption (AASOR xvi. no. 23).

³⁷ AASOR xvi, nos. 15-45.

³⁸ KF 22 f.

for marriage at the proper time. In one of the Nuzian contracts³⁹ a younger sister of the bride is received at the same time "for daughter-ship," and Koschaker infers that she was probably regarded as her sister's maid pending her own marriage. So in general, he suggests, the value of the service of the "adopted" girl would constitute an economic factor in the transaction. While evidence to confirm this is not at hand, the suggestion seems very plausible.

The bearing of adoption upon the meaning of the *terhatu* will be considered further in a different connection.⁴⁰ What is significant for our present purpose is the fact that when a girl is adopted with the idea of giving her later to another man in marriage, the *terhatu* clearly is a form of compensation. If it is not in such cases quite the same thing as a purchase-price, it at least is not far from it. The transaction is now an affair of individuals, the adopter having authority over the girl in his own right, not merely as the representative of the family. Thus disposing of girls in marriage has become at least very closely approximated to sale. It is probable, however, that this development was merely a part of the general process previously outlined, viz., the partial commercializing of marriage under the influence of the growing conception of private property. In any case the Israelite practice attested by Exodus 21:7-11 neither proves nor disproves marriage by purchase as the original and normal form of Israelite marriage.

5. The Wife as Object of the Transaction.

The interpretation of the *mohar* or *terhatu* as a form of compensation is supported by the fact that in the whole transaction the woman is passive rather than active. Even Neubauer, who opposes the whole idea of purchase-marriage in the Old Testament, admits that the customary expressions "give to wife" (נתן לאשה) and "take to wife" (לקח לאשה), corresponding to the Babylonian *mārtam ana aššūtīm nadānu* and *aššatam aḥāzu* respectively, put the wife in the position of object rather than subject of the marriage-agreement; he escapes the implications of this fact by saying that these expressions may have been already antiquated in the biblical sources,⁴¹ which obviously would not invalidate them as evidence of earlier conceptions. Neubauer admits, in fact, that marriage by purchase was practiced by the Babylonians.⁴² Cuq, who denies marriage by purchase in Babylonia, admits that the bride was object rather than subject in the marriage-transaction, as shown by the terminology cited above.⁴³ At the same time, Cuq points out, in

³⁹ HSS v, no. 80 (AASOR x, no. 26).

⁴⁰ V. i., p. 54.

⁴¹ NBG 33.

⁴² Loc. cit.

⁴³ CED 23.

some connections a woman was regarded as a responsible subject. The fact that the woman as well as the man was punished for adultery is a case in point,⁴⁴ though it may be observed that slaves and even animals may be punished for offenses against their owners. The distinction between force and consent in connection with the violation of a virgin is also pertinent, for if the girl's consent is considered significant she thereby becomes an active and responsible agent. In Deuteronomy this is explicitly stipulated with regard to a betrothed virgin and apparently assumed with regard to one not betrothed.⁴⁵

In the Nuzian culture, while the social organization was strongly patriarchal, and the bride was regularly "given" by her father or guardian, there are cases in which her consent to the marriage is definitely attested by the contract, giving her to some extent the status of subject rather than object of the transaction.⁴⁶ Koschaker has remarked that where this is so the bride is given by her brother (probably because the father is dead),⁴⁷ which may indicate that the brother's right to dispose of his sister was more limited than the father's power over his daughter.

Something at least closely resembling the idea of a woman as a mere object of exchange seems to be implied by Laban's assumption of the right to give one girl instead of another in return for Jacob's labor.⁴⁸ Miss Granqvist tells of an Arab whose bride was given to another man after he had paid part of the *mahr* for her, and his only means of avoiding the total loss of what he had paid was to accept her aunt in her place.⁴⁹ We cannot assume that such substitutions were ever legal or customary, though a similar right was assumed by Samson's father-in-law.⁵⁰ Laban carried out the substitution by guile, and the *fait accompli* left Jacob helpless. Even in an ordinary sale, for that matter, the substitution of another object for the one purchased would be decidedly questionable. What is perhaps more significant is the implication that if a man did not for any reason receive the wife to whom he had acquired a right, her father was obliged to give him another daughter in her place, as in the much discussed § 31 of the Assyrian Code. A somewhat similar idea of a wife as an object of value appears in the Assyrian law which allows a man in the position of Tennyson's Enoch Arden to reclaim his wife, but requires him to give her new husband another woman of equal

⁴⁴ CH § 129.

⁴⁵ V. s., p. 20. Cf. further CH § 129; AC §§ 55 f.; DMAL 52 ff.

⁴⁶ HSS v, no. 25 (AASOR x, no. 28); cp. Nuzi I, no. 78; HSS v, no. 79 (AASOR x, no. 25).

⁴⁷ KER 297.

⁴⁸ GMC i. 49 f.

⁴⁹ Gen. 29:21-8.

⁵⁰ Judges 15:2.

value.⁵¹ The same conception is evident also in the brutal law which allows the father of a deflowered virgin to prostitute the offender's wife.⁵² In all these cases the woman is hardly more than an object of exchange. The principle of compensation covers all of them, in much the same way as in cases of blood-revenge.

All of the arguments which have been considered thus far support the general conception of compensation but do not necessarily imply marriage by purchase. There are other arguments which apply more specifically to purchase-marriage, but their cogency is more apparent than real.

6. Use of Words Denoting Ownership.

That Israelite marriage was a matter of ownership has often been inferred from the fact that the noun *ba'al* is used both for the owner of a piece of property and for the husband of a woman, and the verb *bā'al* means to marry as well as to rule or possess. Hence W. R. Smith's famous designation of that type of marriage in which the wife "follows her husband and bears children who are of his blood" as *ba'al* marriage.⁵³ Smith also stressed the application of other words denoting possession (especially *malaka* and its derivatives) to wives.⁵⁴ Eberharter justly replies that such words are of very broad meaning and may be used in various senses;⁵⁵ it is only fair to remark also that the root *mlk* implies primarily authority rather than ownership. Similarly the word *ba'al* and the Akkadian *bēlu* mean "lord" as well as "owner."⁵⁶ Pedersen argues that *ba'al* implies no one-sided sovereignty but expresses psychic community and intimacy as well as subordination.⁵⁷ The use of such words in connection with marriage, therefore, does not imply a relation of ownership.⁵⁸

7. Other Indications of Ownership.

The *patria potestas* was very strong in ancient Israel. The social organization was patriarchal, and a family was called a "father's house."⁵⁹ Children might be sold into slavery to pay their fathers'

⁵¹ AC § 36, lines 103 ff. Koschaker considers this clause a later addition to the law (KER 289 f.).

⁵² AC § 55. Driver and Miles attribute this to the "principle of the joint liability of the family" (DMAL 58 f.).

⁵³ SKM 92.

⁵⁴ Ibid. 95.

⁵⁵ EWB 507.

⁵⁶ EEF 102.

⁵⁷ PI 62 f., 69.

⁵⁸ With regard to the distinction between ownership and authority Prof. G. P. Murdock writes me, "Social science definitely bears you out here."

⁵⁹ PI 61.

debts,⁶⁰ and a father might sell his daughter to another man as a "maidservant" (*'āmāh*).⁶¹ The validity of a woman's vows depended upon her father's approval before her marriage and upon her husband's approval after marriage.⁶² Something like the father's power was therefore conveyed to the husband when the girl was married. In connection with the husband's power it is significant that a double standard prevailed with regard to extra-marital relations. A man might consort with other women than his wife, provided he did not violate another man's rights, but no such liberty was accorded to his wife.⁶³ Similarly in Assyria adultery between a married man and an unmarried woman was not regarded as an offense, and even when the woman was married, but the man did not know it, the offense was not punishable.⁶⁴ These facts have led Driver and Miles to say that the Assyrian Code treats adultery as "a trespass against the husband's property."⁶⁵ Perhaps such a "double standard" proves no more for the ancient Near East than it does in modern times and countries, but at least it indicates that the wife belonged to the husband in a sense in which the husband did not belong to the wife. The last commandment of the decalogue mentions the wife along with house, slaves, livestock, and "anything that is thy neighbor's."⁶⁶

In the case of both father and husband, however, it is possible to maintain that the power in question was authority rather than ownership. We have seen that this is a reasonable interpretation of the terms *mlk* and *b'ḥ*. The woman belonged to her father's family before her marriage, and it was as the representative of the family that her father arranged her marriage. The man too belonged to his father's family. The only difference between the man and the woman at this point was that the latter might be transferred to another family, whereas the former remained always a member of his father's family. Chatilah refers to the right of an Arab sheikh to give members of his group as hostages, to exile them for immorality, and the like; it is even said that in early times he might offer them in sacrifice.⁶⁷ The husband's power over his wife never went farther than this, if it ever went so far.

⁶⁰ Cf. 2 Kings 4: 1; Neh. 5: 5; Is. 50: 1. In this respect, as we shall see, the husband's power was more limited than the father's (v. i., p. 34).

⁶¹ V. s., p. 22.

⁶² Num. 30: 4-16 (Eng. 3-15).

⁶³ PI 70.

⁶⁴ DMAL 38.

⁶⁵ Ibid. 37.

⁶⁶ Ex. 20: 14 (Eng. 17) puts the wife between the house and the slaves. Is it a sign of social progress that Deut. 5: 18 (Eng. 21) gives her a separate position and lumps the other items together?

⁶⁷ CMM 33.

Indeed, as will appear later, it was often rather strictly limited.⁶⁸ We must therefore be content to say with David that the payment of the *terḥatu* established the transfer of the wife from the authority of her father as the head of the family to that of her husband (or, if he was a minor, his father).⁶⁹ To say this, however, is not much different from saying with Koschaker that the husband acquired "ein durch den Ehezweck bestimmtes Eigentum an der Frau."⁷⁰ The gradations between ownership and authority reach a point where the distinction is largely if not wholly a matter of definition. It is a fair question whether the ancient Semite was conscious of any distinction in this marginal area. At any rate the position of the woman in marriage was very close to the dividing line. Since it is possible, however, to interpret the relationship in terms of authority rather than ownership, the husband's power over his wife cannot be regarded as clear evidence of marriage by purchase. The limitations of the husband's rights, indeed, are often urged as proving the contrary.⁷¹

8. *Use of Words Meaning "Buy" or "Sell."*

Less ambiguous evidence of purchase-marriage appears to be supplied by the fact that in three Old Testament passages words meaning "buy" or "sell" appear in connection with marriage. In Genesis 31:14-16 Leah and Rachel complain that their father has "sold" (מכר) them and "eaten" their "money."⁷² Neubauer justly observes that if selling a daughter in marriage had been customary, the fact of Laban's having done so with his daughter's would have been no ground of complaint.⁷³ This does not prove that such a practice had never existed, but only that it had been outgrown when the passage was written; it does show, however, that the use of the verb in this passage is no evidence of marriage by purchase. Many interpreters hold that the later historian presupposed the practice of purchase-marriage in early Israel and in this passage condemned it as unseemly.⁷⁴ Eberharder maintains that while marriage by purchase appears here as something known in Meso-

⁶⁸ V. i., p. 34.

⁶⁹ DVW 9 f.

⁷⁰ Ap. KER 200. Koschaker has now clarified his conception of purchase-marriage: ancient law, he says, knows no absolute ownership, but only a kind and degree of power over various objects, differing according to the nature of the object ("Die Eheformen bei den Indogermanen," *Deutsche Landesreferate zum II. Internationalen Kongress für Rechtsvergleichung im Haag*, 1937, pp. 77 ff.).

⁷¹ V. i., p. 34.

⁷² On the significance of this passage cf. BCLD.

⁷³ NBG 73, 205.

⁷⁴ So, e. g., Holzinger, ZAW Beiheft 27. 230 f., following Smend and Wellhausen. For other references cf. BCLD.

potamia, Laban's procedure was due to foreign influence and was evidently something new in the family of Terah.⁷⁵ We must admit that the passage proves nothing regarding the original basis of Israelite marriage.

Hosea 3:2 is, at most, of doubtful relevance in this connection. "And I bought (וַאֲכַרְתִּי) her for myself," it reads, "for fifteen pieces of silver and a homer of barley." Whether the sum stated should be understood as a bride-price, as the price of a slave, or as a harlot's hire is not sufficiently clear to justify any inference from the use of the verb. Writers of such divergent views as Neubauer,⁷⁶ Benzinger,⁷⁷ and Dus-saud⁷⁸ consider this passage irrelevant for our purpose, quite apart from the question, much discussed lately, of the authenticity and significance of the whole chapter.

More important is Ruth 4:10, "And also Ruth the Moabitess, wife of Mahlon, I have bought (קָנִיתִי) for myself for a wife."⁷⁹ Since the verb here used indicates acquisition in general, not necessarily by purchase, and since a peculiarly puzzling combination of marriage, inheritance, and redemption is involved in the transaction, I prefer to reserve discussion of this passage for a future occasion, calling attention merely to the fact that a close connection of some kind between marriage and property is implied. In none of these cases can it fairly be claimed that marriage by purchase is demonstrated by the use of a verb meaning "buy" or "sell," though marriage and the transfer of property from one owner to another were evidently thought of in similar terms. That this should be so was quite natural, as we have already seen, given the fundamental idea of compensation.

9. Summary and Conclusion.

Consideration of the arguments for marriage by purchase in the light of the more primitive conception of the compensatory gift reveals the fact that such arguments as point most directly to marriage by purchase are the least convincing, while those which are the most cogent actually support the conception of compensation in general rather than actual purchase and ownership. So far as positive evidence is concerned, therefore, the theory of the compensatory gift stands on an equal footing with the theory of marriage by purchase.

⁷⁵ EEF 107 f.; v. s., p. 7.

⁷⁷ BHA 139.

⁷⁶ NBG 204n.

⁷⁸ DMI 143n.

⁷⁹ Commentators agree that verse 5 too should read, "Thou must buy also Ruth the Moabitess." Cp. the use of the same verb in Mishna Qidd. i. 1 (v. i., p. 68).

IV. ARGUMENTS AGAINST MARRIAGE BY PURCHASE

Some of the objections which have been urged against the theory of marriage by purchase apply to any theory which regards the *mohar* and *terḥatu* as compensation; others apply only to the conception of purchase and ownership.

1. *Marriage without terḥatu and by Certificate.*

One of the most impressive objections of the former group is that the *terḥatu* was not essential in Babylonia.¹ The Code of Hammurabi (§ 139) prescribes the provisions to be made for a divorced woman for whom no *terḥatu* has been paid. If no *terḥatu* was required, there was obviously no compensation. The difficulty here, however, is more apparent than real. Our discussion of the relative significance of *terḥatu*, *šerigtu*, and *nudunnū*² will show that the *terḥatu* ultimately fell into abeyance, and the beginning of the tendency in that direction may well go back to the time of Hammurabi. Some Old Babylonian marriage-contracts, as a matter of fact, do not mention the *terḥatu*.³ That the *terḥatu* may have become optional, however, does not imply that it had always been so. We shall discuss later the possibility that the *terḥatu* gradually lost its original significance and was converted into a marriage settlement for the bride.⁴ If that happened, of course, the question of its original purpose is not affected. That in Assyria no *terḥatu* had to be paid for a concubine elevated to the status of a wife is not surprising, since she was already the property of her husband.⁵ For a widow also the *terḥatu* was naturally unnecessary,⁶ since the very use of the term "widow" in Assyrian usage implied that she had no father or guardian.⁷ In short, the existence of marriage without *terḥatu* does not disprove the theory that originally marriage was controlled by the conception of compensation, whether by purchase, barter, or compensatory gift.

There was a form of marriage in the ancient Orient for which no form of compensation was essential. A duly attested agreement established the relationship. Such marriage by certificate, if we may so

¹ CED 24 f.; DMAL 145, 153 f. Cuq goes so far as to pronounce the presence of the *terḥatu* "un fait accidental, quoique fréquent" (loc. cit.).

² V. i., p. 48.

³ SAR nos. 2, 77 (ap. EEF 104); SUA nos. 5, 31, 33, 34 (ap. CED 25).

⁴ V. i., p. 44.

⁵ AC § 34.

⁶ AC § 41.

⁷ DVW 7 f.; DMAL 212, 224-6.

designate it, was known in Babylonia. As Cuq points out, the conditions which appear in the Code of Hammurabi as essential to marriage are an agreement between the fathers of the bride and bridegroom (§ 155 f.), or between the bridegroom himself and the father of the bride (§ 159), and a document from the bridegroom guaranteeing the woman's status (§ 128).⁸ Such a document or "bond" (*riksu*) was customary in Assyria also;⁹ Koschaker believes that *riksu*-marriage was probably the usual form among the Assyrians.¹⁰

It is possible that such certificates were known in Israel. In later times a written contract was certainly used.¹¹ The Old Testament nowhere mentions such a document, but where bills of divorce¹² and written deeds in real estate transactions¹³ were used, written marriage-contracts would hardly be unknown. Such a "covenant" as is symbolically referred to in Ezekiel 16:8 would doubtless be put in writing. Some day an ostrakon bearing a marriage-contract may turn up in a Palestinian excavation. As a matter of fact, one of the Elephantine papyri is a marriage-contract from a Jewish group in Egypt in the Persian period.¹⁴ The use of such documents in Palestine within Old Testament times is thus entirely probable. When the practice began, however, and how general it was, we have no means of ascertaining. In any case, oral agreements must have existed long before the use of writing.

Of course the written contract did not necessarily exclude or take the place of the *terhatu* as the decisive element in constituting the marriage relationship. Much of our knowledge regarding the *terhatu*, indeed, is afforded by the marriage-contracts, in which the amount of the *terhatu* is often an important item. Driver and Miles hold that the *riksu* served simply as a certificate that the marriage had been consummated and was therefore complete.¹⁵ Marriage by certificate without any *terhatu*, while known, was undoubtedly a late development. It did not arise until after the position of woman had become much higher than in early times. The existence of such a form of marriage in the later period, along with marriage by *terhatu*, is quite compatible with the theory that the *terhatu* was (or had been originally) a compensation-gift or even a purchase-price. Koschaker holds that the form of marriage charac-

⁸ CED 27.

⁹ AC § 34.

¹⁰ Ap. KER 287.

¹¹ Tobit 7: 13 (Eng. 14); cp. the post-biblical *ketubbah* (v. i., p. 62).

¹² Deut. 24: 1-4.

¹³ Jer. 32: 10 f.

¹⁴ Elephantine Papyrus G (Cowley's no. 15).

¹⁵ DMAL 170 ff.

terized merely by a written document and the transfer of the wife to her husband's home was still marriage by purchase legally, though not economically.¹⁶

2. *The Prophetic Use of Marriage as a Symbol of the Covenant.*

As against the theory of marriage by purchase among the Hebrews Neubauer emphasizes the use of the marriage-contract by the prophets as a figure for the covenant between Yahweh and Israel. This implies, he thinks, that marriage was a free agreement between the two individuals most immediately concerned.¹⁷ The passages he cites¹⁸ agree well with such a conception of marriage but do not necessarily imply it. As a matter of fact, so far as we can judge from the biblical data, the contract was not made with the girl at all, but with her father or brother; the bridegroom too had only a minor part in the proceedings.¹⁹ This is true even in the idyllic story of Rebekah in Genesis 24. In verses 5 and 8 there is some question whether the woman will be willing to follow Abraham's servant to the land of Canaan, but in verse 41 this has become a question of her family's willingness to give her, and in verses 50 f. they do so without consulting her. Even in verses 57 f., as Neubauer recognizes,²⁰ the question on which she finally is consulted is not whether she will marry Isaac but whether she is ready to go at once.²¹ Furthermore, the prevailing conception of marriage, even in the days of Hosea and Jeremiah, was probably lower than the ideal reflected in the use of the covenant-idea by these prophets. For that matter, the prophets themselves did not think of the covenant as a free agreement between two parties on the basis of equality. At the same time, as Neubauer urges, their symbolism would have had no point if it had not to some extent corresponded to current ideas, and this implies that the Israelite wife had a position of considerable dignity and independence. But at this point the argument flows into and becomes a part of a larger stream.

3. *The Independent Position of the Wife.*

The Israelite woman, as we see her in the Old Testament, was far from being a mere chattel of father or husband. The story of such a marriage as that of Isaac and Rebekah in Genesis 24, in spite of the fact that the bride was object rather than subject of the proceedings, does not read like the account of an exchange of commodities. Women

¹⁶ Ap. KER 288.

¹⁸ Ezek. 16:8; Mal. 2:14; Prov. 2:17.

¹⁷ NBG 22.

¹⁹ V. s., p. 9.

²⁰ NBG 75n.

²¹ V. s., p. 25, on the wife's consent in the Nuzi tablets.

enjoyed a considerable degree of independence and were often treated with affection and respect in ancient Israel, even if they did not have such an independent position in economic matters as the women of Nuzi and of Babylonia had attained much earlier. In the Jewish marriage-contract from Elephantine²² the bride appears as holding property and having the power to make contracts. The law of Numbers 27, allowing women to inherit property, may come from about this time. The high position accorded to woman in Proverbs 31, though probably reflecting still later conditions, is worth noting in this connection.

Certainly there was a clear and sharp distinction between the position of a wife and that of a slave. Deuteronomy 21:14 stipulates that even a captive woman taken by an Israelite as his wife cannot be sold like a slave. The word *mohar* is not used for the price of merchandise or slaves.²³ So too the Akkadian marriage-contracts use a different terminology from that employed when a girl is sold as a slave. Thus at Nuzi, when a father sells his daughter as a maidservant (*ana amtūti*) the price is called *šimu*, as in ordinary purchase, not *terhatu* or *kaspu*.²⁴ Chatila stresses the difference between a wife and a slave in connection with Arab marriage. The reason the *mahr* was obligatory among the early Arabs, Chatila claims, was that they thought of it as distinguishing marriage from concubinage.²⁵ The Assyrian law which provides for the elevation of a concubine to the position of a wife indicates a sharp distinction between the two.²⁶ The superiority of the wife as compared with a hierodule or harlot is equally guarded by the Assyrian Code.²⁷

We have already discussed the practice of selling a daughter as hand-maid (*'āmāh*), with the assumption that she will be taken as wife or concubine by the purchaser or his son.²⁸ This was found to be no evidence for marriage by purchase as the normal form of marriage in Israel. Dussaud actually takes it as evidence to the contrary. Such transactions, he says, are clearly distinguished from normal marriage; therefore the latter must have been something essentially different from marriage by purchase.²⁹ Since the matter apparently belongs under the head of concubinage rather than marriage, however, it has only such significance as may be attributed to the fact that concubinage and marriage were distinguished. This, in turn, proves no more and no less

²² V. s., p. 31, note 14.

²³ Wellhausen, NKGW 1893, 433n (ap. EWB 504).

²⁴ KF 26 f. But cp. "the price of the woman" in AC § 39 (v. i., p. 34).

²⁵ CMM 110.

²⁶ AC § 41; cf. KER 289, and v. s., p. 20.

²⁷ KER 290 f.

²⁸ Ex. 21:7-11; v. s., p. 22.

²⁹ DMI 143.

than the other facts we have noted as showing that the wife's position was one of relative honor and dignity.

In all the ancient civilizations of western Asia the husband's power over his wife was limited. He could neither kill her nor sell her as wife to another man, and even the right of divorce was more or less circumscribed.³⁰ To be sure, the Code of Hammurabi, unlike the Old Testament, permits the sale of a wife to pay her husband's debts.³¹ The wife or children siezed for debt, however, could not be kept for more than three years.³² Strictly speaking, therefore, it was their service for a limited time that was sold, not their persons. The Assyrian Code recognizes only a man's right to pledge his daughter, though the contracts mention sons and wives as well.³³ But when a daughter was given as security, the creditor might give her in marriage and receive "the price of the woman" (*šim sinniṣti*).³⁴ It is significant also that the law regarding violation of a virgin exempts from punishment a man who has a creditor's right to the girl.³⁵ All these facts illustrate the economic aspects of marriage, but the fact remains that a husband could not dispose of his wife at will as personal property.

The fact that the husband's power was limited is often urged as evidence against marriage by purchase.³⁶ Cuq, for example, argues that the independent position of the Babylonian wife was incompatible with her being mere property.³⁷ Even Koschaker, the leading exponent of the hypothesis of purchase-marriage among the Babylonians, admits that marriage by purchase had been outgrown by the Sumerians. The Code of Hammurabi, he thinks, displays a mixture of Sumerian and Semitic conceptions, but even in Semitic marriage the wife was not purchased outright like a slave or animal.³⁸ As compared with the Code of Hammurabi, the Assyrian Code makes the husband's power greater and the woman's less. Koschaker suggests that the military emphasis in Assyrian life required a strong family organization, and also that Sumerian influence was probably less felt than in Babylonia.³⁹ In Assyria and Baby-

³⁰ DVW 12-14.

³² Cp. Ex. 21:7-11; v. s., p. 26.

³¹ CH § 117; cf. NBG 18.

³³ KER 291.

³⁴ AC § 39; KER 287 f. V. i., p. 61.

³⁵ AC § 55; DMAL 56.

³⁶ DMAL 142 f.; EEF 122-4. M. David uses the same argument with regard to the ancient Oriental world in general (DVW 12 f.), and Granqvist and Chatila use it with reference to present-day Arab customs (GMC i. 145 ff.; CMM 115-17).

³⁷ CED 31. EEF 104 f. also emphasizes the wife's personal and property rights in Babylonia as against purchase-marriage.

³⁸ KRS 197 f.

³⁹ Ap. KER 287.

lonia alike, however, the right acquired by the husband over his wife, according to Koschaker, was not full ownership but a *zweckbestimmtes Eigentum*, an ownership limited to the specific purpose of marriage.⁴⁰

The facts which have been cited still leave room for the possibility that marriage among these peoples was based on purchase. The claim that the independent position of woman disproves the hypothesis of purchase-marriage ignores the fact that property rights are usually limited in various ways and degrees, to say nothing of the fact that slaves and animals may be loved and well treated. The conditions under which even real estate may be sold and the persons to whom it may be sold have generally been more or less circumscribed by law or custom in all ages. The law of the Year of Jubilee is only one example. Property rights in persons are even more naturally and universally subject to restriction and social control. According to Exodus 21:2-6 a Hebrew slave had to be emancipated after seven years, unless he formally declared his desire for permanent servitude. Entirely unrestricted, absolute ownership of private property, in fact, would be hard to find in any time or nation. A transaction does not cease to be a purchase because restrictions are placed on the rights of the purchaser. Cuq recognizes this, pointing out that such restrictions are often explicitly made by deeds of sale: e.g., Roman practice allowed the seller of a slave to include in the contract a stipulation that the slave was not to be mistreated.⁴¹ The stipulation in Nuzian marriage-contracts that the husband shall not take another wife, and that her sons shall inherit his property, might be considered, *ceteris paribus*, as such a limitation of the purchaser's right.⁴² As regards a wife's right to hold property of her own, it is pertinent to remark that even slaves may have this right to some extent.

In any case, to prove that marriage was not basically a matter of ownership at all it would be necessary to show not merely that the wife had achieved in relatively late times a high degree of independence, but that she had been so independent always. It is quite possible that the development of her independence was a growth away from earlier conditions, producing merely an inconsistency between the actual practice of later times and the original basis of marriage. This is actually Cuq's view with regard to Babylonian civilization.⁴³ Koschaker is therefore quite right in maintaining that while the husband's power over his wife among the peoples of the ancient Near East was undoubtedly a *zweck-*

⁴⁰ KRS 197 f.; KER 288. V. s., p. 28, n. 70.

⁴¹ CED 29 f.

⁴² KF 26.

⁴³ Cf. DMAL 153 ff. for a critical discussion of Cuq's view.

bestimmte Gewalt, this does not necessarily prevent us from regarding the forms of marriage practiced by them as essentially *Kaufehe*.⁴⁴ That the wife possessed a considerable degree of independence, even in very early times, is not incompatible with her being legally her husband's property, bought and paid for. Thus far the arguments against marriage by purchase are not conclusive. On the other hand, while the high position of the wife can be reconciled with marriage by purchase, it is more easily reconciled with the view that as a valued member of her father's family she could not be acquired by another family without a valuable gift as compensation.

4. *The Wife's Continued Connection with Her Own Family.*

Perhaps the most serious difficulty for any theory of compensation is the fact that a woman's connection with her father's family was not entirely severed by marriage. Not much, to be sure, can be inferred from Deuteronomy 22: 13-19, where the father appears as his daughter's vindicator when her husband brings a false accusation against her. Here the charge that the girl was not a virgin when she was married may be taken as an accusation against the father himself, meaning that he had not delivered the article stipulated in the contract. When a widow, however, returns to her father's house at her husband's death, she has clearly not lost all connection with her own family, nor has she become her husband's property to such a degree that she belongs to his estate.⁴⁵

Not that a woman's connection with her husband's family automatically ceased at his death. The existence of levirate marriage is enough to prove the contrary. It is significant also that a second *mohar* was not required for levirate marriage. This is not definitely stated in the Old Testament, to be sure, and the fact that the *mohar* is never mentioned in the Old Testament in connection with levirate marriage proves nothing, since the *mohar* is rarely mentioned in any connection. The Talmud, however, specifically classifies levirate marriage as marriage by intercourse, as distinguished from marriage by money.⁴⁶ Among the Yemenite Jews today, moreover, there is no second *mohar* in levirate marriage, which is regarded as merely the continuation and fulfilment of the first union.⁴⁷

⁴⁴ V. s., note 40.

⁴⁵ Granqvist urges this fact as against marriage by purchase among the peasants of Palestine (GMC i. 146).

⁴⁶ Mishna Qidd. 1. 1.

⁴⁷ Goitein, *Zur heutigen Praxis der Leviratsehe bei orientalischen Juden* (*Journal of the Palestine Oriental Society*, 1933, pp. 159-166), p. 160.

Among the present-day peasants of Palestine a man who marries his brother's widow must give another *mahr*,⁴⁸ but this was not so among the pre-Islamic Arabs. According to Ṭabarī, a man's heir might claim his widow by virtue of the *mahr* which had been paid for her, either marrying her himself or giving her to another man and receiving from him a *mahr* (i. e., taking the place and exercising the right of the bride's father).⁴⁹ Here the widow is practically treated as a part of the dead man's estate, with the exception that until the heir formally asserts his claim by casting his mantle over her she is free to return to her father's house. Again it is clear that the wife's position is like that of a piece of property but not quite the same. She is a person, with some freedom of choice. A slave would have no such option as she is given, though perhaps there is something analogous in the native Hebrew slave's choice between going free or remaining permanently with his master when his term of servitude is over.⁵⁰ Yet the right of the heir is primary, and apparently no choice is left the widow if he acts promptly.

It would seem that along with the idea of a right to marry the woman the idea of responsibility for her maintenance also enters into the situation. In claiming his right to marry the widow or give her in marriage the heir assumes also this responsibility, or by failure to assert his right he indicates that he declines to assume the responsibility. In the latter case, the interest of the dead man's family in the widow is relinquished, and both authority over her and responsibility for her support revert to her father's family.

How far all these elements were involved in the Israelite levirate is a difficult question, the discussion of which I must reserve for another occasion. The important point for our present purpose is that all the evidence, indirect though it be, indicates that no second *mohar* was required for a levirate marriage in Israel. As a matter of fact, the brother-in-law regularly appears in the Old Testament more as performing or refusing to perform an odious duty than as claiming a privilege for which he would be willing to pay anything.⁵¹ Evidently the *mohar* created a claim on the woman which was not wholly cancelled by her husband's death.

When there were children, so that levirate marriage in its Israelite form was not necessary, other considerations might bind the widow more or less to her husband's family, even though she might be under no obli-

⁴⁸ GMC i. 146.

⁴⁹ Ṭabarī on Sūra iv. 23 of the Qurān (SKM 104 f. quotes the passage in full in both Arabic and English).

⁵⁰ Ex. 21:2-6 (v. s., p. 23).

⁵¹ Cf. Gen. 38; Deut. 25:5-10; and cp. Ruth 3:12 f., 4:1-6.

gation to remain. Miss Granqvist tells us that among the *fellāḥin* the husband's relatives are reluctant to lose his widow and endeavor to keep her with them. This is partly because they dislike to see her carry out of the family any presents her husband may have given her.⁵² Also they do not wish to lose her services in home and field.⁵³ Furthermore the children, who belong to their father's family and cannot be taken from it, need their mother's care, and for this reason the widow herself often asks to be allowed to remain unmarried.⁵⁴ All these considerations must have been as valid in ancient society as they are today.

In Assyria a woman was free to leave her husband's family only if she had no sons and her husband's father was dead; otherwise she was not even called a widow (*almattu*).⁵⁵ This was not quite the case in Israel, for Judah says to Tamar, "Remain a widow in thy father's house."⁵⁶ Yet the social legislation of the Old Testament regarding widows must have referred primarily to those who had neither relatives of their own nor members of their husbands' families to support them.

While there were thus restrictions on a widow's right to return to her father's house, such a right was clearly recognized under certain circumstances. But this does not necessarily mean that the *mohar* or *terḥatu* could not have been a compensatory gift or even a purchase-price. Naturally, even on the basis of marriage by purchase, a woman's family would not lose all interest in her. The ties of family affection are not severed by a change in legal relationships. Just as a Roman master might stipulate that the slave he was selling must be well treated,⁵⁷ so a father might be concerned to make sure of his daughter's welfare and might continue to be so concerned even after her marriage. He might thus, so to speak, hold a sort of vendor's lien upon the girl; the husband's failure to treat her properly, or his death, might be regarded as terminating the contract, so that the wife (considered as property) reverted to her original owner, her father. All this is hypothetical, to be sure. Its only purpose is to show that the idea of purchase is not necessarily invalidated by the fact that a widow, or even under some circumstances a wife, could return to the house of her father. Still less does the possibility of such a return militate against the hypothesis that the wife was a gift given in return for the gift of the *mohar*.

⁵² GMC ii. 306.

⁵³ Ibid. 302.

⁵⁴ Ibid. 290-301.

⁵⁵ DVW 7 f.; KER 289; DMAL 212, 224-6.

⁵⁶ Gen. 38:11.

⁵⁷ V. s., p. 35.

5. *Marriage without traditio puellae.*

Both the theory of marriage by purchase and the theory of the compensation-gift assume that the group regarded its women as valuable members for whose loss due compensation must be received when they went to other groups. A somewhat formidable difficulty for these theories is therefore created by the practice of *errēbu*-marriage, in which the wife remained in her father's home, and her children belonged not to her husband's but to her father's family, yet the husband was required to give a *terḥatu* and forfeited it if he left her.⁴⁸ To this practice corresponds the story of Laban, who required Jacob to serve him for his daughters though evidently not expecting them to leave his home.⁴⁹ In such marriages, obviously, the *terḥatu* or *mohar* was not a compensation to the family for the loss of the woman.

Why it was actually required we can only guess. Since it went to the father, it was not a *pretium pudicitiae* for the girl herself.⁵⁰ Of course by such a marriage a girl lost the potential economic value which she had for her father while she remained a virgin and could be given in marriage to another family; perhaps, therefore, it was felt that her father should be compensated for this loss.⁵¹ Or, possibly, the *terḥatu* was not originally required for this type of marriage and was only taken over after its significance had undergone some reinterpretation. It may be, for example, that the payment of the *terḥatu* was thought to be necessary in this case simply as a pledge of good faith, though we shall see that this cannot have been its primary significance in the more familiar type of marriage.⁵² The fact that among the Kwakiutl of British Columbia the bride-price is returned to the husband with interest when the children are born has suggested that the bride-price was a guarantee for the fulfilment of the husband's obligation to beget children.⁵³ Such a practice, if demonstrable, might afford an explanation of the *terḥatu* in *errēbu*-marriage, but there is no reason to suppose that the *terḥatu* was ever thus paid back among Sumerians or Semites. Still another possibility is that the payment served merely as the established means of closing the contract and making it legally binding.

It is also possible that the *terḥatu* in *errēbu*-marriage reflects a development of individualism at the expense of the emphasis on the family's

⁴⁸ BCLD 201 ff.

⁴⁹ Gen. 29-31; v. s., p. 18.

⁵⁰ V. i., p. 50.

⁵¹ Against this may be counted the value of her labor to the family, and also that of her husband and their children.

⁵² V. i., p. 65.

⁵³ So Davy, *La foi jurée*, p. 100, ap. CMM 122.

primacy. More or less in line with the development of private property, marriage may have come to be regarded not so much as an arrangement between families as a transaction between individuals. In that case, the actual *traditio in domum mariti* would be less important, the essential thing being the committal of the bride to her husband. Certainly a distinction should be made between the delivery of the bride to the house of her husband or his father and her delivery to her husband himself. Either of these might take place without the other. A man might acquire a girl "as daughter-in-law," i. e. as a bride for his son, and receive her into his house some time before giving her to his son, just as a girl is sometimes married very young among the Palestine *fellāḥin* today and brought up by her mother-in-law, the consummation of the union being postponed until both husband and wife have reached a proper age.⁶⁴ On the other hand, a bride might be "given" to her husband without leaving her father's house, and this is what happened in *errēbu*-marriage. The *terḥatu* would then be essentially the price of the *ius mariti*, as Driver and Miles think it may have been in all types of marriage.⁶⁵

Whether any of these possibilities be regarded as likely or not, enough has been said to show that the use of the *terḥatu* in *errēbu*-marriage does not invalidate our contention that in the *ba'al* type of marriage the *terḥatu* was a compensation to the family of the bride for the loss of its daughter. It may even be said that there is no evidence of *errēbu*-marriage as an Israelite custom, so that the *mohar* might still be a compensatory gift even if the *terḥatu* were not, but since the story of Jacob points to such a form of marriage among the Aramaeans, and the story of Samson suggests its existence among the Philistines, this argument cannot be considered very weighty.⁶⁶ The most likely explanation of the *terḥatu* in *errēbu*-marriage is that it came to be required after the significance of the *terḥatu* had undergone some such reinterpretation as has been suggested above.

6. The Inadequate Amount of the *terḥatu*.

Another objection to the theory of purchase-marriage is that the customary amount of the *terḥatu* was quite inadequate for a purchase-price. Koschaker meets this difficulty by supposing that the *terḥatu*, while no longer economically the equivalent of the bride in Babylonia in historic

⁶⁴ GMC i. 34 ff.; cf. especially quotations given in notes, pp. 39, 44.

⁶⁵ DMAL 159.

⁶⁶ Cf. J. Morgenstern, "Beena Marriage . . .," ZAW 1929. 91-110; 1931. 46-8; and cp. BCLD 261-3. Morgenstern now regards *errēbu*-marriage as fitting Jacob's case better than *beena*-marriage (personal communication).

times, was still a legal equivalent;⁶⁶ in other words, the legal form of marriage was that of purchase even without an actual exchange of value for value. The Talmudic betrothal-gift, which had to be of real value however small, would then be a parallel case,⁶⁷ as would also the *muhrā* of the Elephantine marriage contract.⁶⁸ Various analogies in our own laws suggest themselves, such as the requirement of a nominal payment to make a gift of real estate legal, or the insertion of the phrase "for value received" in a promissory note. The absence of an actual exchange of equivalent economic values is therefore no proof that Babylonian marriage had not been originally a matter of purchase. The theory of the gift, however, avoids this difficulty altogether. While the gift is regarded as a compensation for loss, it is not necessarily an equivalent in value.

7. The Dowry.

One of the arguments most strongly urged against the theory of marriage by purchase is the fact that the *mohar* and *terḥatu* were not the only gifts or payments involved in marriage. In Israel the bride's father not only received a *mohar* from the bridegroom; he also (sometimes, at least) gave her a dowry (Hebrew *šillūḥim*).⁶⁹ Rebekah's nurse and maids and the maids given by Laban to Leah and Rachel may have been thought of as such a *Mitgift*.⁷⁰ When Othniel had won the hand of Achsah by smiting Kiriath-sepher, "she incited him to ask from her father a field"—and then proceeded to do the asking herself. Caleb gave her accordingly "Upper Gulloth and Lower Gulloth."⁷¹ When Solomon married the Egyptian princess, her father captured Gezer, burned it, slaughtered its inhabitants, "and gave it"—what was left of it!—"a *šillūḥim* to his daughter, Solomon's wife."⁷² Tobit 8:21 (cp. 10:10) is sometimes cited as exemplifying the same practice, though in this case the goods are not given to the bride but to the bridegroom, and it is hardly to be supposed that it was ever customary for

⁶⁶ KRS 108; so too Korošec, KER 288.

⁶⁷ V. s., p. 22.

⁶⁸ V. s., p. 31.

⁶⁹ Neither the *šillūḥim* nor the *mohar* is anywhere definitely said to have been given in all cases, nor are they anywhere named together. It is not unreasonable to assume, however, that both were normally given. The word *šillūḥim* has commonly been derived from the root *šlh* (send), but in Ugaritic it occurs in the form *šlh*, though the verb meaning "send" is *šlh* as in Hebrew (cf. the Hymn to Nikkal, line 47, and Gordon's note, BASOR 65. 30).

⁷⁰ Gen. 24:59-61; 29:24, 29. Cf. EEF 161.

⁷¹ Joshua 15:18 f.; Judges 1:14 f.

⁷² 1 Kings 9:16.

fathers to give half of their property to their daughters' husbands at the time of the wedding, with a promise of the other half at the death of the bride's parents. On such terms a father with several daughters would be in difficulty. The fifth-century Aramaic marriage contract which has been cited above with reference to the *mohar* contains also a list of things given to the bride by her father, as well as a much shorter one of things given to the bridegroom. The former recalls descriptions of the *nudunnū* in Babylonian marriage contracts (v. i.).

Neubauer regards the *Mitgift* as the rock on which the idea of purchase-marriage suffers shipwreck.⁷³ Benzinger, however, thinks that the case of Pharaoh's daughter reflects Egyptian rather than Hebrew practice, and that Achsah's request of Caleb indicates that such gifts were unusual.⁷⁴ Be that as it may, they were certainly not unknown, and the existence of similar gifts among the neighboring peoples makes it doubly important to consider their significance.

In Babylonian marriage the bride's father gave a dowry. It is called *nudunnū* (gift) in the marriage contracts⁷⁵ and *šerigtū* in the Code of Hammurabi,⁷⁶ where the word *nudunnū* is used for the husband's gift to his wife.⁷⁷ The *nudunnū* of the marriage contracts consisted of a great variety of presents, given to the bride by her family when she was sent to her husband's house.⁷⁸ According to the Code of Hammurabi the *šerigtū* was the wife's property and passed at her death to her sons, though it is possible that the husband had a life-interest in it. If there were no sons, the *šerigtū* reverted to the woman's family.⁷⁹ In case of divorce the husband was required to make good the *šerigtū*.⁸⁰ In the Assyrian Code the *šerigtū* reappears as the *šerqu*.⁸¹ Another word used for the dowry in Babylonian legal documents is *mulugu*, which appears also in this sense in the Amarna letters and the Nuzian tablets.⁸² Like the *mohar* and *terhatu*, the *šllh* (*šillūhim*) and *mlg* (*mulugu*) appear together in the Ugaritic hymn to Nikkal, but the passage throws no light on their nature or relationship.⁸³

⁷³ NBG 17.

⁷⁴ Enc. Bib. iii. col. 2943.

⁷⁵ Driver and Miles point out that in Talmudic Aramaic מלון has this meaning (DMAL 409).

⁷⁶ CH §§ 137-8, 142, 149, 162-4, 167, 171-4, 176, 178-84. Cf. KRS 135, 173; EER 285 f.

⁷⁷ V. i., p. 47.

⁷⁸ Cf., e. g., KUH iii, nos. 9, 10, 483.

⁷⁹ CH §§ 162-4; cf. DMAL 206 f.

⁸⁰ CH § 138.

⁸¹ AC § 29; cf. DMAL 207-11.

⁸² Cf. KRS 174 f.; AASOR x. 24; GSW 157 f.; KF 20n; BASOR 65. 30. Cp. the Talmudic מלון.

⁸³ Cf. BASOR 65, p. 30.

From the Code of Hammurabi (§ 164) it is clear that the *šerigtu* was commonly larger in amount than the *terḥatu*. Similarly in the Elephantine marriage contract the value of the father's gifts is much greater than that of the *muhṛā*. It is obvious that if the father gave his daughter as much as he received from the bridegroom, or more, he would gain nothing by the transaction but would be decidedly the loser. It was not, therefore, a matter of merely selling the girl for a price equivalent to her value. It is fair to say, however, that the sale, if such it were, was real and complete when the father received the *terḥatu*, and if he chose to spend the whole price or more upon the object he was selling, the transaction did not thereby lose its essential character. The husband, of course, did not get the *šerigtu* or *šillūhim*. For him, since he had paid the *terḥatu* or *mohar* and received his bride, the effect of the transaction was not altered by the fact that the girl's father gave an equal or greater amount to her. The relative size of the two amounts does not necessarily affect the character of the transaction.

The *šerigtu* and the *terḥatu* may have been of entirely independent origin, the latter being (let us say) a purchase-price, based on economic considerations, and the former a present, based perhaps on natural affection or family pride. A father sending his daughter into another family would have various inducements for giving her a parting gift, whether or not he was selling her. The consciousness that she went as a representative of his family might lead him to give her a dowry which would enhance the standing of his family. The desire to give her a degree of independence in her husband's family might also play a part. If these seem rather advanced and sophisticated grounds, it should be remembered that we do not know how primitive the *šerigtu* was. It at least presupposes the possibility of a woman's holding property. On the other hand, the possibility remains that the *šerigtu* had a prehistoric *raison d'être* entirely different from anything we have mentioned.

On the assumption that marriage was a matter of purchase, it is conceivable that in the course of social development an emerging sense of dissatisfaction with such a practice might give rise to the custom of giving the bride a dowry. When fathers were no longer able to regard their daughters as mere objects of market-value, and affection inspired regret at losing them from the home (a situation which may have arisen very early), it would be natural to give them presents to atone, so to speak, for enriching the family treasury by selling them. Miss Granqvist says that among the Palestinian peasants today there is a feeling of sadness and shame at letting a daughter leave the family, and she suggests that this may arise from a feeling that the *mahr* received for her really belongs to her. When a girl's brother exchanges her for a bride for

himself in *badal*-marriage, thus avoiding the payment of a *mahr*, he is somewhat ashamed of using his sister in this way and feels obliged to give her a present.⁸⁴ Needless to say, this proves nothing for primitive Semitic customs; it illustrates, however, the kind of situation which may very well have brought about the practice of giving a dowry if marriage was based on purchase.

If something like this happened, the *terhatu* itself or a part of it may have been used for the *šerigtu*, or if the father wished to give more than he received he may have passed on to his daughter her *terhatu* with an additional gift of his own. Here we begin to emerge from the darkness of mere conjecture into the penumbra of partial knowledge. There is evidence which has been adduced to show that the *terhatu* was actually converted, gradually and in differing degrees among different peoples, into a dowry. According to the Code of Hammurabi (§§ 163 f.) the Babylonian *terhatu* was paid to the father or guardian of the bride, though slightly later Old Babylonian documents attest a modification of this custom.⁸⁵ In the mixed culture of Nuzi likewise it was the father or guardian who received the *terhatu*. A part of the amount paid by the husband, however, was often delivered to the wife. Where this happened the *terhatu* may be said to have been partially converted into a dowry. That such a practice may have existed among the Aramaeans is suggested by the words of Leah and Rachel in Genesis 31:14-16.⁸⁶

An interesting analogy may be seen among the Arabs. In pre-Islamic times the *mahr* was regularly paid to the bride's father, who kept it as his own. Mohammed decreed that the *mahr* belonged to the wife, and it is now customary, especially in the towns, to pass on the *mahr* or a part of it to the bride in the form of personal or household goods.⁸⁷ A part of the *mahr*, indeed, is sometimes merely stipulated in the marriage contract and not actually paid unless the husband dies or divorces his wife.⁸⁸ Often, however, especially among the bedouins and peasants but occasionally even in the towns, the *mahr* is still retained by the father, in part or in whole, as his own property.⁸⁹ In other words, the conversion of the *mahr* into a dowry has taken place in Arab marriage, though it has never been thoroughly carried through for all divisions of society.

I have elsewhere discussed briefly the evidence that a similar development was taking place in the ancient Oriental world.⁹⁰ A summary of

⁸⁴ GMC i. 138 f.

⁸⁵ V. i., p. 46.

⁸⁶ For references and discussion cf. BCLD.

⁸⁷ Cf. BCLD p. 270, and to the references there given add CMM 183 ff.

⁸⁸ GMC ii. 13n; CMM 184, 192 f., 195.

⁸⁹ CMM 185, 194, 196; GMC i. 135.

⁹⁰ BCLD, pp. 270-274.

the main points and a few additional observations may be given here. For Assyria the evidence is weak. The *terhatu* is mentioned only once in the Assyrian Code, and the significance of the passage is much disputed. The law in question (§ 38) states that if a man divorces a wife living in her father's house, he may take back the "ornaments" he gave her but cannot claim the *terhatu* "which he brought." The line which follows,⁹¹ translated by Luckenbill⁹² "it is free to the woman," has been taken by Koschaker to indicate that in Assyria the *terhatu* was given to the wife.⁹³ But the meaning of the statement may be quite different. Driver and Miles translate it "he (then) is quit in respect to the woman."⁹⁴ This involves a rather abrupt transition in thought, since the context deals not with the wife's claims on the husband but with his claims to the *terhatu*, but the grammar of the sentence decidedly favors the interpretation of Driver and Miles. The same writers have presented an excellent case for their view that the Assyrian *terhatu* was given to the bride's father or guardian, exactly as in Babylonia.⁹⁵ There is therefore no good reason to suppose that it belonged to the wife at all. In any case § 38 refers only to particular cases in which the wife was living in her father's house at the time of the divorce, or to a special form of marriage in which the wife remained with her father as in the Babylonian *errēbu*-marriage.⁹⁶ Koschaker's argument for the conversion of the *terhatu* in Assyria must therefore be rejected.

Lewy sees evidence for such a conversion in another section of the Assyrian Code. While, as we have noted, the *terhatu* is mentioned only in § 38, there are references elsewhere to the *nudunnū*, particularly in § 32, which states that a woman who has received her *nudunnū* is responsible for her husband's liabilities. Whether she received the *nudunnū* from her husband or her father is not indicated. Lewy supposes that the *nudunnū* was the money for which the bride was "given," being related to the verb *nadānu* (give) as the *uzubbū* (divorce money) is related to the verb *ezēbu* (divorce). Since the *nudunnū* appears elsewhere, however, as a present from the bridegroom to the bride, Lewy supposes that the father, after receiving it in consideration of the *traditio puellae*, was expected to give it to his daughter, so that it became in effect a gift to her from the bridegroom.⁹⁷ Driver and Miles have con-

⁹¹ a-na SAL za-a-ku (DMAL 404).

⁹² In SOH, p. 231.

⁹³ KQU 56 f.

⁹⁴ DMAL 405; cf. 192 and the note on p. 477.

⁹⁵ Ibid. 147, 192 f.

⁹⁶ V. s., p. 39, and cf. BCLD 261 f.

⁹⁷ ZA xxxvi. 144 f.

clusively answered this argument.⁹⁸ No evidence that the father ever received his daughter's *nudunnū* has been found. The idea of giving implied in the word *nudunnū* refers not to the giving of the bride but to the giving of the *nudunnū* itself; in fact the term is a general designation for a gift. There remains therefore no solid reason for supposing that the conversion of the *terḥatu* into a dowry had taken place in Assyria.

For Nuzi the case is considerably stronger. The evidence here is found in the statements of many marriage contracts that a *rihtu* (remainder) has been bound in the bride's *qannu*; one tablet adds, "for a *mulugu*." As my previous discussion of this material shows, the most probable interpretation of these statements is that the *rihtu* given to the bride by her father or guardian was the balance left from the *terḥatu* when the father had deducted what he wished to retain for himself. In other words, the conversion of the *terḥatu* into a dowry was under way but not complete, as among the Arabs of our own time.

There is reason to believe that in Babylonia the development had taken place much earlier, though the evidence is not entirely clear. That the *terḥatu* was given to the father of the bride is sufficiently evident, but an Old Babylonian marriage contract states that the bride has received her *terḥatu* and is satisfied,⁹⁹ which may mean that her father, having received it from the bridegroom, has passed it on to her. Other tablets refer to the binding of the *terḥatu* in the *qannu*, apparently implying the same practice.¹⁰⁰ Ebeling infers that the father was free to keep the *terḥatu* or give it to the bride as he chose.¹⁰¹ The implications of the Code of Hammurabi in this regard are somewhat puzzling. To understand them we must take cognizance of another element in the situation.

8. The Bridegroom's Gift to the Bride.

There are frequent references in ancient documents to a present made by the husband to his wife. Possibly this is the meaning of the *mattān* of Genesis 34:12.¹⁰² In Judges 15:2 Samson brings a kid as a present to his wife. This has been compared with the *ṣadāq* of the pre-Islamic Arabs,¹⁰³ as well as the Germanic *Morgengabe* and the *pretium pudicitiae*

⁹⁸ DMAL 153, 203 f.

¹⁰⁰ BCLD p. 271 and note 70.

⁹⁹ SUA, no. 2.

¹⁰¹ EER 282.

¹⁰² The mutual relation of the *mohar* and *mattān* in this passage is uncertain. Driver and Miles hold that they cannot be distinguished (DMAL 156). Compare the equally puzzling expression in the CH §§ 150-61, "If a man bring a *biblu* (present) to the house of his father-in-law and give a *terḥatu*."

¹⁰³ V. i., p. 62.

of Roman law, and accordingly explained as a gift from the husband by way of compensation for the wife's loss of her virginity.¹⁰⁴ The Arab peasants of Palestine have something like this now in the money which the bridegroom gives the bride for the "unloosing of the shoe" (*fakk il-wata*), though this is given not after but before the marriage is consummated.¹⁰⁵ Such an analogy hardly fits the case of Samson, for his visit with the present took place some time after the wedding and the seven days' feast accompanying it, but perhaps his gift should not be considered at all in connection with the *mattān*. That the latter was a *Morgengabe* is possible but hardly likely. It is not even clear from the scanty evidence that the name was reserved for any particular gift, nor that a gift from the bridegroom to the bride was customary in Israelite marriage.

Babylonian law and custom clearly recognize such gifts. Sometimes what is contemplated seems to be merely presents given during the course of married life.¹⁰⁶ Apparently this is true of the *dumāqi* (ornaments) referred to by the Assyrian Code (§§ 25-6, 38). More relevant for our purpose is the marriage-settlement provided by the husband and designated in the Code of Hammurabi and the Assyrian Code by the word *nudunnū*. We have already seen that this word, like the Hebrew word *mattān*, means simply "gift." We should therefore expect to find it applied to various kinds of gifts, and this we have found to be the case. Lewy's view of the *nudunnū* as a payment for the delivery of the bride has been noted. Driver and Miles, while rejecting this view, accept one point in Lewy's argument, viz. that the payment of the *nudunnū* served as acknowledgment that the contract had been fulfilled and the marriage consummated.¹⁰⁷ Apparently in neither Babylonia nor Assyria was the *nudunnū* given before the consummation of the marriage. This seems to support the view that it was a *pretium pudicitiae*. Koschaker admits that this may have been its original meaning, though in the time of Hammurabi the *nudunnū* evidently served a different purpose.¹⁰⁸ As a matter of fact, that the ancient Semites ever entertained the idea of a *pretium pudicitiae* is very doubtful.¹⁰⁹

According to the Code of Hammurabi a tablet certifying the wife's right to the *nudunnū* was given to her, but she did not actually receive the money unless her husband died.¹¹⁰ Even then she had only the

¹⁰⁴ So, e. g., BHA 138 f.

¹⁰⁶ CH § 150; cf. KRS 104 f., 167.

¹⁰⁵ GMC i. 128.

¹⁰⁷ DMAL 153.

¹⁰⁸ KRS 172 f.

¹⁰⁹ V. i., p. 61.

¹¹⁰ CH § 171; cf. KRS 165 f.; DMAL 198.

usufruct of it, the principal being reserved for her children.¹¹¹ Here the *nudunnū* is clearly intended as a provision for the widow and children in case of the husband's death. The widow for whom no *nudunnū* has been provided is assigned a son's share in her husband's estate.¹¹² The Assyrian law implies that in Assyria the *nudunnū* was actually given to the wife instead of being merely guaranteed.¹¹³

9. The Relation Between the Various Gifts.

Evidently there were three kinds of gifts or payments involved in the marriage customs of western Asia in Old Testament times, and for each of them there is at least something comparable in the Old Testament itself. The *mohar* and *terḥatu* correspond fairly closely, each being a payment by the bridegroom to the father or guardian of the bride. The *šillūhīm* and the *šerīqtu* (the *nudunnū* of the Old Babylonian marriage contracts) both represent the dowry given by the father to his daughter. The third type, exemplified by the *nudunnū* of the Code of Hammurabi and the Assyrian Code, is the bride's marriage-settlement from her husband, whether intended as a *Morgengabe* or as a sort of life-insurance to provide for her in case of widowhood. Nothing corresponding to this is clearly attested by the Old Testament, but the *mattān* of Genesis 34:12 may be something of the sort.

It is quite possible to envisage the relationship between these types of gifts in a way consistent with the assumption that purchase was the original basis of the transaction. We have seen that in the course of time the *terḥatu*, or a part of it, was often passed on to the bride by her father. It thus became in effect a marriage-settlement, as though given directly by the bridegroom to the bride. We may surmise that the development followed some such steps as these: (1) without any relation to the *terḥatu*, the bride's father gave her a dowry (*šerīqtu*, *nudunnū*, or *mulugu*); (2) later, instead of taking money for the dowry from one pocket, so to speak, and putting the *terḥatu* into another, the father used a part or all of the *terḥatu* itself for the *šerīqtu*, perhaps even adding something to it; (3) finally, the amount devoted to this purpose was given directly by the bridegroom to the bride, her father merely seeing to it that this was stipulated in the contract. The term *nudunnū* was then applied to the settlement thus provided, any addi-

¹¹¹ EER 282 f. The Babylonian custom recalls the Arab *ḥaqq muta'abbir*, which is specified in the marriage-contract but actually given only in case of divorce or the husband's death, and which must be paid before the estate can be divided (BCLD note 67; CMM 184, 192 f., 195 f.; GMC ii. 13n). Cp. also the Talmudic *keṭubbah* (v. i., p. 62).

¹¹² CH § 172.

¹¹³ AC § 27; cf. DMAL 199.

tional dowry added by the father was called the *šerigtu*, and only the amount (if any) still received and retained by the father was now known as the *terhatu*.

Of course it is not to be assumed that such a simple evolution from one step to another proceeded *pari passu* among all the Semitic peoples. The facts we have observed, however, fall fairly easily into this framework. The first stage is purely hypothetical; it may or may not have preceded the second in the actual course of development. The second is exemplified by the practice of binding a *rihtu* (Nuzian) or the whole *terhatu* (Old Babylonian) in the bride's *qannu*. The implication of the Code of Hammurabi (§ 164) that the *šerigtu* was larger than the *terhatu* may indicate that the father had given his daughter as her *šerigtu* the whole *terhatu* with an additional gift. The third stage corresponds to the presupposition of the Code of Hammurabi and the Assyrian Code in general that the *terhatu*, *šerigtu*, and *nudunnū* were for some time co-existent. The Neo-Babylonian contracts, in which the *terhatu* has all but disappeared,¹¹⁴ represent the logical outcome of this process, the husband's gift having become definitely and entirely a marriage-settlement for the bride.

Whatever this reconstruction may be worth, the influence of complicating factors must be recognized. Foreign associations and cultural mixtures were certainly involved in various ways. The combination of Sumerian with Semitic elements in Babylonia, of Hurrian and Semitic elements at Nuzi, and of all these and others in the cultural heritage of Assyria sufficiently exemplify such mixture. Koschaker imputes to the interaction of Sumerian and Semitic customs some of the phenomena of the Code of Hammurabi. Assuming that the marriage-settlement from the husband evolved from the bride-price, he observes that we should not then expect to find them both existing together, as they do in Babylonian law. We have just seen that their co-existence may be explained by supposing that only a part of the *terhatu* was converted into a *nudunnū*, the rest being still received by the bride's father and called the *terhatu*. Koschaker, however, suggests that the conversion of the bride-price into a marriage-settlement had taken place in Sumerian but not in Semitic custom. Hammurabi, legislating for both portions of his realm, recognized the Sumerian marriage-settlement and as a Semitic name for it chose the term *nudunnū*. The recognition of both Semitic and Sumerian marriage in the same code of laws, together with intermarriage between Semites and Sumerians, promoted the influence of one system upon the other.¹¹⁵

¹¹⁴ EER 286.

¹¹⁵ KRS 170 f., 178-84.

This explanation and the hypothesis of inner development from one form to another are not mutually exclusive. What Koschaker supposes to have taken place in the Sumerian culture might also have occurred independently among the Semites, but that the process was furthered by Sumerian influence is entirely probable, and that the customs of both peoples are contemplated by the Code of Hammurabi would seem to be beyond question. Whatever explanation be regarded as probable, it must be admitted that the *šerigtu* and *nudunnū* afford no solid ground for doubting that the *terhatu* was originally and primarily a bride-price. This is equally true of the other types of gift associated with the marriage transaction in the sources, such as the *biblu*, *zubullū*, and *huruppāte* referred to in connection with Assyrian patrician marriage.¹¹⁶

Yet, after all, such hypotheses as these seem forced and tortuous at best. A far more plausible, because more simple, explanation is provided by the theory of the compensatory gift. Aside from customs based on obvious social needs, such as the support of widows and orphans, the various types of gifts and the feasts which are also a regular element in the transaction are simply parts of the normal procedure in making a covenant. The exchange of gifts and the eating of the same food serve to create a sort of blood-relationship.¹¹⁷ Gifts of all kinds, expressing a sense of social obligation and a measure of good will, as well as pride and the desire for social prestige, are an inevitable concomitant of the proceedings. The customs of Palestinian Arabs today show how complicated such arrangements may become.¹¹⁸ It is therefore unnecessary to look for a special significance in each gift, or to suppose that every term employed in this connection indicates a particular type of gift with a special function of its own. Doubtless there were distinctions. The *mohar* was always the bridegroom's gift to his father-in-law, the direct compensation for the loss of the bride, and the *šillūhim* was always the father's gift to his daughter. Other words, however, including *mattān*, were probably used in a more general way for any of the gifts exchanged. Possibly this helps to explain the occurrence at Ras Shamra of the words *trh* and *mhr*, *tlh* and *mlg* together.¹¹⁹

The arguments thus far considered apply, though not to the same degree, to both the theory of marriage by purchase and the theory of the compensation-gift. Two other objections may be cited which apply only to the conception of purchase-marriage. It will be seen that neither of them is of great importance.

¹¹⁶ V. i., p. 68.

¹¹⁷ CMM 157, 160.

¹¹⁸ GMC i. 126.

¹¹⁹ V. s., p. 42.

10. *The Payment of the terhatu in Advance.*

Driver and Miles claim that Babylonian marriage cannot have been based on sale, because the bride was not necessarily delivered when the *terhatu* was given, whereas Babylonian sale was a matter of direct exchange, based on barter, with no room for an advance-payment with an obligation to deliver the goods in the future.¹²⁰ Koschaker recognizes this fact. He points out, however, that the need for credit-transactions had nevertheless been felt and had been satisfied outside the framework of ordinary sale. Contracts involving a payment in advance for goods to be delivered later are not cast in the form of sale but in that of loan. It is stated that the one party has "borrowed" a certain amount of money and must within a specified time deliver certain goods in exchange for it: furthermore, the money is said to have been loaned "for" (*ana*) or "for the price of" (*ana šām*) the goods.¹²¹ That the form of direct exchange was retained in Babylonian sale is therefore of no significance for betrothal and marriage.

11. *Marriage Older Than Sale.*

Driver and Miles remark that if there was any borrowing at all between marriage and sale, it may have been the latter which was influenced by the former, since marriage was an older institution than sale.¹²² One reply to this would be that marriage by capture may have preceded marriage by purchase, and the conception of the wife as the personal property of her husband would thus be older than the practice of paying a bride-price. When sale and purchase had become customary with respect to other forms of property, the more peaceable method of buying a wife would take the place of marriage by capture.

Whether marriage by capture was ever actually recognized as an established custom by the ancient Semites is doubtful. The Hittites are said to have practiced marriage by elopement or abduction along with marriage by purchase,¹²³ but there is little if any evidence of such a custom among the other ancient peoples of western Asia. As for Israel, Eberhart long ago successfully refuted Engert's argument for the practice of marriage by capture among the Israelites.¹²⁴ Such a story as

¹²⁰ DMAL 144.

¹²¹ KRS 138, citing SUA nos. 105 and 106.

¹²² DMAL 144.

¹²³ KER 294, citing HC §§ 28, 37. M. David, as Koschaker notes, has a different interpretation (DVW 38 ff., note 129). Cf. also V. Korošec, *Raub- und Kaufehe im Hethitischen Recht* (1932).

¹²⁴ EEF 80-07.

that of the abduction of girls from the vineyards at Shiloh to provide brides for the decimated tribe of Benjamin¹²⁵ has no bearing whatever on this question. Arguing from an extraordinary emergency-measure to a recognized custom can only produce confusion. With the Arabs the case is somewhat different, for there is some evidence of marriage by capture among them, and the marriage-customs of some of the bedouins to this day include what seem to be survivals of this practice.¹²⁶ Even here, however, it is unlikely that this was ever the usual, customary way to get a wife. It would involve such constant friction between clans and tribes as to be intolerable. In short, it is altogether improbable that the customs encountered in historic times among the peoples with whom we are concerned were developed from marriage by capture.

The practice of barter, on the other hand, undoubtedly preceded sale and purchase. Before any recognized medium of exchange came into use, objects of value may have been used for the *mohar* and *terhatu*. We have previously noted the views of Frazer and Lévy-Bruhl regarding marriage by exchange and its relation to barter.¹²⁷ That marriage was doubtless older than sale is thus no insuperable obstacle to the theory of marriage by purchase, if it be assumed that marriage by barter or exchange came first. But even more primitive than barter was the compensation-gift.¹²⁸ The most probable development, where marriage has taken on more or less of the legal form of purchase, is from the compensation-gift through barter to purchase.

¹²⁵ Judges 21.

¹²⁶ SKM 98 f.; Westermarck, *Hist. of Hum. Marr.* ii. 268 (citing Palmer, Burckhardt, and Jaussen).

¹²⁷ V. s., p. 11.

¹²⁸ While the distinctions implied by our terms gift, barter, and purchase are to some extent modern, they point to real differences in ancient practice (v. s., pp. 11 f.).

V. ALTERNATIVE EXPLANATIONS

If it be granted that the hypothesis of the compensatory gift satisfies all the requirements of the evidence, it still remains for us to examine other explanations that have been proposed for the *mohar* and *terḥatu* and to see whether any of them is as probable as our hypothesis, or more probable.

1. *The Price of the Children.*

Since the primary purpose of marriage in the ancient world was to continue the husband's family by providing male heirs, it is not surprising that some scholars have thought of the *mohar* as a payment for the children to be born of the marriage.¹ That there is some truth in the theory may be admitted. It was primarily the power to bear children which made the woman a valuable acquisition. But it is more accurate to say that the *terḥatu* was given for her as a potential mother than to say that it was paid for the children themselves.

2. *The Price of the ius mariti and the patria potestas.*

Driver and Miles maintain that if marriage was in any sense purchase, what was bought was not the girl herself but the *ius mariti*.² If this statement is to be accepted, the term *ius mariti* must at least be taken in a broad sense. The husband certainly acquired more than the right to make the woman the mother of his children. Eberharder suggests that if the *mohar* was a purchase-price at all it may have been the price for the transfer of the *patria potestas* along with the particular right of the husband as such.³ We have seen that the husband received a kind and measure of authority closely resembling that which the father had previously had. It is thus quite true that by giving the *mohar* the bridegroom secured both the *ius mariti* in the narrow sense and something like the *patria potestas*. But these were no more regarded as goods to be bought and sold than was the woman herself. It is to be noted that neither Driver and Miles nor Eberharder offer these explanations as their own conclusions.

3. *Remuneration for the Expense of Bringing Up the Girl.*

Driver and Miles suggest that perhaps the *terḥatu* was originally the father's remuneration for the expense of bringing up his daughter.⁴

¹ Chatila (CMM 118-22) discusses this theory as applied to the Arab *mahr* by Lahy (*Du clan primitif au couple moderne*) and Farès (*L'honneur chez les Arabes avant l'Islam*).

² DMAL 159.

³ EWB 508.

⁴ DMAL 145n.

This conjecture is based upon a questionable inference from one of the Nuzi tablets, which records the marriage of a girl brought up by a palace handmaid.⁶ Her father states that he has bound thirty shekels in the girl's *qannu*⁶ and adds, "Since Eiši has brought her up, therefore Šeḫel-Tešup shall give to me 10 shekels of silver as *terḫatu* for my daughter." Gadd remarks that the way in which the palace handmaid is mentioned suggests that the ten shekels to be paid by the bridegroom are intended to cover the expense of having the girl reared by her,⁷ and it is this which gives rise to the suggestion of Driver and Miles. Another explanation, however, is possible. In Nuzian adoption contracts it is frequently stipulated that the adoptive parent may give the girl in marriage and receive her *kaspu* or *terḫatu*; indeed this is clearly the purpose of the "adoption."⁸ The original parent or guardian receives or is promised a stated amount and declares that he has bound or will bind the *riḫtu* (remainder, balance) in the girl's *qannu* (girdle?). In other words, the parent gives the "remainder" left by subtracting from forty shekels the amount he is to receive. The adoptive parent receives from the husband forty shekels and from it pays the amount due to the parent, thus retaining as his own remuneration the same amount which the parent had given the girl as her *riḫtu*. (It would be easier to state this clearly if the term "remainder" had been applied to the portion retained by the father after deducting the amount given to his daughter; actually the procedure was the reverse of this: the amount to be retained by the father seems to have been determined first and deducted from forty shekels, the amount left being then given to the daughter, even though in fact she might receive it before she was married and thus before her father had actually received anything.) Now if Eiši, in the case referred to above, occupied the position of the adoptive parent in this type of contract, then the statement quoted regarding her means in effect, "Since Eiši has brought up my daughter and therefore is to receive 30 shekels from the 40 to be paid by Šeḫel-Tešup, the latter shall pay me only the amount I am to retain, viz. 10 shekels, and give the rest to Eiši." The remuneration for bringing up the girl was thus a part of the adoption-arrangement. While it was taken from the money paid by the bridegroom, and would have gone to the father if there had been no adoption, this does not prove that the bridegroom's payment itself was originally intended as remuneration for the expense of bringing up the girl. To be sure, ancient fathers may have felt that

⁶ GTK, no. 42.⁶ V. s., p. 46.⁷ GTK, no. 42, note.⁸ E. g., CEN i, no. 78 (KNR, no. 26); HSS ix, no. 145 (GNT, no. XXXIV).

A similar though more complicated case is that of AASOR xvi, no. 55.

the *terhatu* was in effect a remuneration, without which all that they had spent on their daughters would be a dead loss. But that this was the original purpose or primary significance of the *terhatu* is quite improbable.

4. *The pretium pudicitiae.*

Perhaps the most formidable rival of the theory of purchase-marriage has been the view that the *mohar* was a gift to the bride in compensation for the loss of her virginity, like the Germanic *Morgengabe*.⁹ The reasons adduced for this view are not convincing, however, and it encounters obstacles which force its advocates to resort to arguments sometimes so far-fetched as to be amusing. At the same time they have at least succeeded in showing that the theory of purchase-marriage cannot be accepted.

Neubauer¹⁰ and Eberharter¹¹ interpret the expression "the *mohar* of the virgins" in Exodus 22:16 (Eng. 17) as meaning "the *mohar* of virginity." While this is philologically possible (though we should expect the masculine plural in such a case), it has no such inherent probability as to give it evidential value. Eberharter claims that Deuteronomy 22:29 expressly separates the payment of fifty shekels from the requirement of marriage.¹² Again the interpretation is possible, but no more, and in Exodus *mohar* and marriage are inseparably connected by the use of the verb. The device by which Eberharter seeks to escape this difficulty only puts it into bolder relief. Quoting the Vulgate, *dotabit eam et habebit eam uxorem*, he proposes to insert a conjunction in the Hebrew after יִסְתַּהֲרֶנָּה, thus making two clauses as in Deuteronomy.¹³ There are two objections to this. One is that it produces an impossible Hebrew construction. The other is that the statement (like the Latin, for that matter) would still most naturally be taken to mean that the woman became the man's wife through the payment of the *mohar*.

That the deprivation of the girl's virginity is what makes the payment obligatory in the case contemplated by this law, whether or not marriage follows, is obvious. That the payment is a *pretium pudicitiae* for the girl herself, however, is not necessarily implied. It may be the father's loss which has to be indemnified, since his daughter is no longer

⁹ Luther translated *mohar* as *Morgengabe*, and this interpretation was adopted by such writers as Saalschütz and Keil (for references cf. NHA i. 115n); it has been defended with particular zeal by Neubauer (NBG) and Eberharter (EEF, EWB).

¹⁰ NBG 208-10.

¹¹ EWB 493; EEF 112-14.

¹² EWB 494.

¹³ EWB 497; EEF 117.

desirable as a bride and so cannot be expected to bring him a good *mohar*. Eberharther himself admits this. That an offense against property is involved, he says, is not to be denied; the question is merely wherein it consists, and his contention is that what has been taken is not the girl but her virginity. To prove that the girl herself was not the object to be paid for he remarks that the father's ability to prohibit the marriage shows the girl to be still in his power. But if the marriage is forbidden the money is not a *mohar*. The man in that case is required to "weigh out money like the virgins' *mohar*," i. e. to pay a fine equivalent to the *mohar* which he would give if he married the girl. If a *mohar* is given, the marriage takes place, and the girl is then no longer under her father's authority.

Dussaud offers another interpretation of the *mohar hab-b'etülöt*. The term means, he says, the *mohar* which returns to the girl, because the father's refusal to allow the alliance prevents the operation of the principle of compensation.¹⁴ Again we must point out that if the marriage is not allowed the money is not a *mohar* and is not so called. As for the fifty shekels of Deuteronomy, Dussaud suggests that possibly they combine the *mohar* and the *mattān* after the fashion of the Germanic *Morgengabe*, but more probably the delivery of the *mohar* is required to save the girl's honor and show she is not a prostitute, since one of the essential conditions of legal marriage has been fulfilled.¹⁵ Similarly in Genesis 20:16, according to Dussaud, Abimelech gives Abraham a thousand shekels of silver to save Sarah's honor by making his connection with her legitimate.¹⁶ But in all these instances the payment is much better explained as a fine to compensate the father (or brother) for the fact that he can no longer expect to receive a "virgin's *mohar*" for the woman.

The *mohar* was clearly paid not to the bride but to her father.¹⁷ Why a *pretium pudicitiae* should be paid to the father calls for explanation, at least, though it may not be inexplicable. Driver and Miles remark that in the cases of both Dinah and Michal the bride plays no part at all; it is the family's or parents' interest that is concerned. The *mohar* therefore cannot be a payment to the girl for the loss of her virginity.¹⁸ Neubauer, however, suggests that the guardian ordinarily acted for the girl simply because she was a minor, the usual age of marriage being rather low, just as the bridegroom's father also acted for him when he

¹⁴ DMI 146.

¹⁵ Loc. cit.

¹⁶ DDRS 85.

¹⁷ Both Gen. 34:12 and 1 Sam. 18:25 presuppose this. In Ex. 22:15 f. it is not stated that the father receives the payment, but the parallel in Deuteronomy makes this quite certain.

¹⁸ DMAL 157.

was not of age.¹⁹ This was so in the Talmudic period, when the betrothal money was given to the bride herself if she was of age.²⁰ It does not follow, however, that the same thing was true in Old Testament times, much less in still earlier ages. There is nothing in the text to indicate that Dinah and Michal were minors, or that the law of Exodus 22:15 f. applied only to a girl not yet of age. Probably very few women came to maturity in ancient Israel without being at least betrothed. The question remains, however, whether there was any such thing as coming of age for women in the sense that they were free from parental authority. Neubauer cites Numbers 36:6 as showing that an adult, *gewaltfrei* woman acted for herself in arranging her own marriage. Now the story of Zelophehad's daughters and the laws connected with it belong to an admittedly late stratum of the Pentateuch. It may be that when women had achieved the right of inheritance they were also more independent in marriage than formerly. But, be that as it may, Zelophehad's daughters had no guardian to act for them. Their father was dead, and they had no brothers. It is hardly strange that they were allowed to act for themselves under such circumstances.

If there were any strong positive evidence for the interpretation of the *mohar* as a price of virginity, the fact that it was given to the father might be explained by supposing that he received it as the bride's representative, for modesty's sake, and transmitted it to her. The Elephantine marriage contract seems to presuppose something like this, for while the *muhrā* is paid to the father, the wife is required to return the same amount to the husband if she secures a divorce (a contingency, by the way, which of itself shows an advanced stage of progress). That even in the patriarchal period the father was expected to pass on the *mohar* or part of it to the bride is suggested, as we have seen, by the complaint of Rachel and Leah against Laban's consuming their money. We have seen also that there is reason to believe that such a practice was well known by that time in western Asia.²¹ If the *mohar* was a compensation for the loss of virginity, paid to the woman's father as her representative, it was not literally a *Morgengabe*, being paid in advance. There are parallels, however, for such a practice.²² The fact that the *mohar* was paid to the father instead of the bride is thus an obstacle, but not an insurmountable one, for the view that the *mohar* was a *pretium pudicitiae*.

¹⁹ NBG 33 f., 159-61, 165, 209-11.

²⁰ Ibid. 24.

²¹ V. s., pp. 44 ff.

²² Eberharther cites the ancient Bulgarian custom (EEF 113 f.); cp. also the Arab *fakk il-waṭa* (v. s., p. 47).

It is not the only obstacle. In the fifth-century marriage contract from Elephantine the woman for whom the *muhra* was paid was probably not a minor and certainly not a virgin, having been married before. Neubauer argues that since the papyrus comes from a military colony open to foreign influence, it proves nothing regarding the Israelite *mohar*.²³ Eberharther suggests that the colonists in Egypt may have extended the use of the *mohar* to cases where the bride was not a virgin, though setting the amount very low under such circumstances (only five shekels in this instance).²⁴ All this may be true, yet it is certainly simpler to explain these phenomena on the supposition that the *mohar* was something essentially different from a *pretium pudicitiae*. At any rate the papyrus does not, as Eberharther claims it does, confirm his interpretation of the *mohar*. The fact is that there seems to be no real evidence for this view, while there are several grave objections to it.

The *terhatu* as well as the *mohar* has been interpreted in this way. If it should prove probable or certain for the *terhatu*, this explanation of the *mohar* would gain in plausibility. In this case the theory has been defended on the basis of etymology. Thus van der Meer has recently championed the derivation of the noun *terhatu* from the verb *rehû*, designating the man's part in copulation.²⁵ The validity of the argument is undermined by two considerations: in the first place, the proposed etymology is impossible;²⁶ in the second place, even if it were correct, it might signify, not that the husband compensated the wife for the loss of her virginity, but that he bought from her father the right to beget children by her.²⁷

In the Assyrian Code (§§ 55-6) there is a remarkably close parallel to the Hebrew law of the "*mohar* of the virgins," especially the revised form given in Deuteronomy. The resemblance is so close, indeed, as to suggest more or less direct dependence.²⁸ A man who has violated an unbetrothed virgin²⁹ must marry her and is not allowed to divorce her, though her father may prohibit the marriage as in the Hebrew law. If the man is not married, moreover, he must pay the girl's father a sum of money which, as in Exodus, is not specified, but which is called "the

²³ NBG 211n.

²⁴ EWB 409 f.

²⁵ RA xxxi. 121 ff.

²⁶ V. s., p. 10, Goetze's note.

²⁷ Cp. the suggestion of Driver and Miles that the *mohar* may have been the price paid for the *ius mariti* (v. s., p. 53).

²⁸ The fact that the Deuteronomic Code is a revision of the Book of the Covenant made probably in the Assyrian period adds force to this suggestion.

²⁹ The distinction made by Driver and Miles between betrothal and inchoate marriage (v. s., p. 21) is irrelevant here; at any rate Assyrian inchoate marriage corresponds to Israelite betrothal.

third of silver, the price of the virgin" (or "the silver, the virgin's third").³⁰ If the offender is already married, instead of paying this money he must give his wife to the injured girl's father "to be dishonored," i. e. made a prostitute for the father's profit.³¹ If the man can give legal proof of the girl's consent, however, he merely pays "the price of the virgin," and her father disposes of her as he pleases.

The term "third" as used in these laws appears also in § 24, which requires that a man who has knowingly allowed his wife to entertain the runaway wife of another man shall pay the third (lines 64, 71). The "price" also is mentioned in this law: if the runaway wife has been harbored by the other woman without the knowledge of the latter's husband, he is not responsible, but his wife is condemned to have her ears cut off, and to save her from this he may pay a stated sum of money "as her price" (line 59). Driver and Miles argue convincingly that the "third" cannot mean here a third of the wife's "price"; it must mean a definite sum which was "presumably one third of some well-established or customary penalty."³² In the law with which we are here more directly concerned the "third" appears to be in apposition with "the price of the virgin," and this is confirmed by the variation in word-order without change of meaning. Old Assyrian (Cappadocian) *naruqu* contracts call a traveling salesman's commission his "third."³³ Evidently the word was used as a technical term, though its exact connotation escapes us.

The similarity of the Assyrian "price of the virgin" and the Hebrew "*mohar* of the virgins," though striking, must not be regarded as supporting the idea that the *mohar* was a purchase-price. It must be remembered that neither *mohar* nor *terhatu* is ever used for the price of an object or slave, and *šimu* never appears as an equivalent of *terhatu*. Where the latter term itself is not used it is represented by the general word *kaspu* (silver, money).³⁴ The Assyrian parallel shows clearly,

³⁰ AC § 55, line 34; § 50, line 40, *šalsâte kaspi šim batulte*; § 55, line 39, *kaspa šalsâte ša batulte*. Luckenbill translates "threefold" instead of "third," but cf. DMAL 468 (note on § 24, line 64).

³¹ DMAL 58.

³² DMAL 83 f.

³³ Cf. Eisser & Lewy, MVAG xxxv. 80 ff.; BCLD 267 f.

³⁴ Cf. KRS 136 and DVW 12 regarding Babylonia; KF 26 f. regarding Nuzi. This word is used also here in AC. The frequent use of ideograms in the tablets, allowing no indication of case-endings, leaves the reader to infer from the context and word-order the syntactic relations of the terms. It is therefore hard to determine whether *kaspu* here means "silver," as the medium in which the "price" is to be paid, or whether it stands in apposition with "third" and "price," meaning "the money, the third, the price of the virgin." In the latter case its use here resembles the way in which it is used for the *terhatu* in the Nuzi tablets and other cuneiform documents (cf. BCLD, notes 36 and 37).

however, that in Assyria the payment required of the seducer was no *pretium pudicitiae* for the girl. The payment of the "price of the virgin" takes the place of a brutal exchange of one woman for another. If the offender has a wife he delivers her in exchange for the girl to the latter's father; if he has no wife to give, he must pay in money. It is exactly as though he had disabled the other man's slave or ox and had been compelled to take it in exchange for a sound one or pay the price of it. In short, it is not the girl but her father whose loss must be indemnified. Thus the Assyrian law supports what is less conclusively indicated by the Old Testament itself.

The category which fits this transaction most closely is that of retribution and satisfaction by the *lex talionis*, with provision for "composition" by a payment like the Teutonic *wergeld*. When a death is avenged by another death, there is no real payment or exchange, except as the balance in man-power between the two social groups is restored. Similarly the exaction of an eye for an eye or a tooth for a tooth does not repay the injured person's loss. The ideas of retaliation and compensation are easily mixed, the concept of satisfaction forming a natural bridge between them. This is evident in the Code of Hammurabi. For example, if a man dies or loses an eye as the result of a surgical operation, the surgeon's hand is cut off (§ 218), but if it is a slave who dies or loses his eye, the surgeon gives another slave or pays for the loss of the eye, as the case may be (§§ 219 f.). The amputation of the surgeon's hand is retaliation; the giving of another slave or paying for the eye is compensation.⁸⁵ The Assyrian law of the "price of the virgin" occupies much the same marginal area between compensation and retaliation.

Composition for homicide is not allowed by the Old Testament.⁸⁶ Murder can be atoned for only by the death of the murderer. For those guilty of manslaughter the cities of refuge are provided, and after the death of the high priest the offenders are free to return to their homes, but the manslayer who leaves the city of refuge before the death of the high priest is fair prey for the avenger of blood, and the enforced sojourn in the city of refuge during this period cannot be commuted into a payment of money.⁸⁷ The Code of Hammurabi allows the payment of a *wergeld* for manslaughter,⁸⁸ and the Assyrian Code gives the avenger of blood the option of seizing the murderer's inheritance instead of killing him.⁸⁹ The only case in which the Old Testament permits a

⁸⁵ The same mixture of ideas appears also in §§ 209-14 and 229-31.

⁸⁶ Ex. 21:12; Lev. 24:17, 21; Num. 35:16-21, 30 f., 33; Deut. 19:11-13.

⁸⁷ Ex. 21:13 f.; Num. 35:22-28, 32; Deut. 19:1-10.

⁸⁸ §§ 207 f.

⁸⁹ AC, Tablet B, § 2.

payment of blood-money is that of the man gored to death by another man's ox.⁴⁰

These various forms of retaliation and composition help us to understand the significance of the "virgins' *mohar*" and the Assyrian "price of the virgin." Driver and Miles rightly designate the latter as the "*wergeld* of the girl, i. e. the sum payable in composition for the injury done to her."⁴¹ The only addition needed to make this statement entirely adequate is that the girl's father is the party indemnified, as Driver and Miles indeed have previously made clear.⁴²

Discussing further the meaning of the price (*šimu*) of a person here and elsewhere, Driver and Miles adduce our passage in Exodus and Deuteronomy and suggest that a girl had a certain value or tariff-price, and that this price decided the amount of the compensation payable by the man who deflowered her. Mishnaic passages showing later Jewish practice are quoted to show that the tariff was probably based upon the value the girl would have in the slave-market before and after she was violated. In much the same way, Driver and Miles conclude, the *šimu* of a person may have been determined by the Assyrians.⁴³ Whatever may have been the case in Assyria, however, the reference to the slave-market is unnecessary for Israel. The statement in Exodus that the guilty man must pay money "like (i. e. according to) the virgins' *mohar*" means that the amount of the fine was that of the normal *mohar* in marriage. Deuteronomy substitutes for this measure the fixed sum of fifty shekels, which may well have been the customary amount of the *mohar* at the time when the law was given this formulation, unless indeed the fixed amount was specified for the very reason that the *mohar* was too variable to afford an enforceable standard. At any rate the Assyrian *šim batulle* was plainly no *pretium pudicitiae* and therefore affords no support for such an interpretation of the *mohar habbatūlōt*.

Driver and Miles say, in fact, "There appears to be no trace of the idea of a *pretium pudicitiae* among the early Semites." They venture the suggestion that scholars acquainted with this idea among other races have brought it into the discussion.⁴⁴ More probably, at least so far as

⁴⁰ Ex. 21:28-32; cp. CH §§ 250-52. The blood-wit here is called both כֶּפֶר and פְּדִיּוֹן נַפְשׁוֹ; cp. the figurative use of כֶּפֶר in various passages and the religious uses of פָּדָה and its derivatives.

⁴¹ DMAL 60.

⁴² While § 50 does not say to whom the money is to be paid, it can be legitimately inferred from § 55 that the father receives it as the *bel mārī*, "owner of the girl" (DMAL 59).

⁴³ DMAL 62-5. Cf. also *ibid.* 37, 40, 58, 61, and KQU 28n.

⁴⁴ DMAL 157 and note.

German scholars are concerned, Luther's translation of *mohar* as *Morgengabe* is largely responsible, and he probably got the idea from Jewish tradition. A customary clause in the Jewish *ketubbah* is translated by Rabbi J. H. Greenstone as follows: "I will set aside for thee two hundred *zūz* in lieu of thy virginity, which belong to thee (according to the law of Moses)." ⁴⁵ In the original the text reads ויהיבנא ליכי מוהר בתוליכי כסף זוזי מאתן of virginity two hundred *zūz* of silver," etc. ⁴⁶ Here the conception of a *pretium pudicitiae* seems to be well rooted in Jewish tradition.

On the other hand, rabbinic usage clearly identifies the *mohar* and the *ketubbah*, ⁴⁷ the latter term being used for the payment as well as the contract in which it is promised. But this settlement was not paid until the husband died or divorced his wife, and the traditions regarding its origin explicitly connect it with the support of the divorced wife. ⁴⁸ All this is quite inconsistent with the idea of a *Morgengabe*. Perhaps, if one may indulge in still another conjecture, the idea of the *pretium pudicitiae* was read into the "virgins' *mohar*" by the rabbinic interpreters through association with the abstract use of the masculine plural. ⁴⁹

The pre-Islamic *ṣadāq* has been commonly regarded as a *pretium pudicitiae*. In Moslem usage the *ṣadāq* and the *mahr* are the same, and Chatila claims that this was always the case, ⁵⁰ but W. R. Smith regarded the *ṣadāq* as a *Morgengabe*, though belonging only to the particular relationship which he called *ṣadiqah*-marriage. ⁵¹ This, however, was probably, as Noeldeke argued, not a form of marriage at all but an extra-marital relationship. ⁵² On the other hand, we have seen in the present-day Palestinian custom of giving money for the "unloosing of the shoe" (*fakk il-waṭa*) ⁵³ a clear case of the *pretium pudicitiae*.

⁴⁵ Jewish Encyclopedia vii. 472.

⁴⁶ Cf. facsimiles printed *ibid.* ii, opposite p. 126; vii, p. 475, etc.

⁴⁷ Cf. references cited by Jastrow, *Dict. of the Targ., Talmud, etc.*, s. v. מוהר. In the Mishnaic references to marriage בכסף בשטר וכביאה (Ket. 4.4; Qidd. 1.1) the "money" is not the settlement promised by the *ketubbah* but the betrothal-token, and the "document" is here called not *ketubbah* but *giṭṭin*.

⁴⁸ Greenstone, Jewish Encl. vii. 472; E. N. Adler, *ibid.* 474.

⁴⁹ Lev. 21:13; Ju. 11:38, Ezek. 23:8; cp. Deut. 22:13 ff. Cp. also the expression quoted above from the *ketubbah*.

⁵⁰ CCM 109.

⁵¹ SKM 93 f., 96, 111 f., 119.

⁵² ZDMG xl. 154. DMI refers also to Wellhausen, *Die Ehe bei den Arabern* (NKGW 1893), and de Jaussen, *Coutumes des Arabes aux pays de Moab*, 49, note 4.

⁵³ GMC i. 128; ii. 122 f. V. s., p. 47.

While the origin and antiquity of this practice cannot be determined, it should warn us against assuming that the ancient Semites had no such custom. The fact remains, however, as stated above, that there is little if any evidence of a gift of this sort among any of the early Semitic peoples. If there was one, it was not the *mohar* or *terḥatu* but the *mallān* or *nudunnū*.⁵⁴ The "virgins' *mohar*" was simply the normal *mohar* for a virgin.

5. *Provision for Widowhood or Divorce.*

Another interpretation of the *mohar* is that it was intended to provide for the wife's support in case of widowhood or divorce. Gordon argues that from the beginning this was the purpose of the *terḥatu*, and that indications of the idea of purchase show later degeneration.⁵⁵ M. David agrees that in the Code of Hammurabi the *terḥatu* was regarded as a provision against divorce, but as regards its original purpose he is agnostic.⁵⁶ Unquestionably the *terḥatu* and its equivalents among other peoples have been used at times for this purpose. It is not unlikely that among certain groups and in certain periods this was the prevailing conception of them. In Talmudic times, as we have already seen, the *keṭubbāh* had precisely this purpose, but while some of the rabbis claimed that the institution went back to Moses, others regarded it as an innovation designed to counteract the freedom and prevalence of divorce.⁵⁷ Nor is it certain that the connection between the *mohar* and the *keṭubbāh* was ancient. Certainly the "money" by which a wife was "acquired," i. e. the merely nominal amount given to the bride as a betrothal token, was quite distinct from the deferred but substantial settlement of the *keṭubbāh*. The division of the *mahr* which has become customary in certain Arab circles affords an interesting analogy to this, but in this case both portions are often (though not always) regarded as providing for the wife in case of widowhood or divorce.⁵⁸ The arguments for considering the Babylonian and Assyrian *terḥatu* as being primarily such a provision for the widow or divorcée are hardly conclusive. David bases his interpretation of the Code of Hammurabi to this effect on § 138, according to which a childless wife when divorced is entitled not only to the dowry brought from her father's house but also to the equivalent of her *terḥatu*,⁵⁹ or, if she has no *terḥatu*, one mana of silver (§ 139). Here it seems at first sight that the *terḥatu*, if there is one, serves to provide for the divorced wife's support, and a stated sum is prescribed

⁵⁴ V. s., p. 46.

⁵⁵ GSW 157; BASOR 65. 31.

⁵⁶ DVW 13, 20.

⁵⁷ Greenstone, loc. cit.

⁵⁸ V. s., p. 48, note 111.

⁵⁹ DVW, loc. cit.

for this purpose in case no *terhatu* has been given. But if that be the meaning, why is it said that the husband must give an amount equal to the *terhatu*? What has become of the *terhatu* itself? Has it somehow come back into the husband's possession, and is he here required to give it a second time? Has the wife been holding it, so that she now has twice the original amount? Or should we assume that the father has retained the *terhatu*, in which case both he and the woman will now have the same amount? Merely to ask these questions is enough to show that the law in question by no means necessarily implies David's interpretation.

The Assyrian Code declares that a man who divorces his wife is free to give her something or not as he chooses (§ 37). If she is living in her father's house, the husband may take back the "ornaments" he has given her but cannot claim the *terhatu* (§ 38). If the reference to the wife's living in her father's house has in view *errēbu*-marriage, this law means simply that an *errēbu*-husband may leave his wife and her father's home but by so doing forfeits the *terhatu*, as in Sumerian law.⁶⁰ This is probably the correct interpretation. If *errēbu*-marriage were not meant, the statement that the wife was living in her father's house at the time of the divorce would imply that otherwise the husband might demand the return of the *terhatu*. Assuming that the purpose of the *terhatu* was to provide for the wife's support in case of divorce, we should then have to infer from this law that the *terhatu* could fulfil its purpose only when the wife remained with her father or returned to him; in other words, a wife who followed her husband and loyally stayed with him would be left without means of support if he divorced her, while one who deserted her husband was provided for. Since this can hardly have been intended, we must conclude that § 38 probably does not refer at all to the type of marriage in which the wife goes with her husband. As a reference to *errēbu*-marriage it does not necessarily exclude the view of the *terhatu* as a provision for the wife in case of divorce or widowhood, but it is equally compatible with other interpretations.

Gordon finds support for his view in the Nuzi tablets.⁶¹ Here, as we have seen, the marriage contract often states that a sum called the *rihtu* (remainder) has been bound or will be bound in the *qannu* (girdle?) of the bride. This sum and the amount of the *terhatu* paid to the father or guardian of the girl are variable, but their total is regularly forty shekels. From this fact Gordon infers that the combined *terhatu* and *rihtu*, the former coming from the husband and the latter from the

⁶⁰ Cf. BCLD 261 f.

⁶¹ GSW 157.

girl's guardian, formed a fund to ensure the support of the wife if her husband divorced her or died. Having discussed this theory elsewhere,⁶² I may here simply say that I do not find it convincing. The explanation of the facts which has already been stated⁶³ seems more probable.

Even for historical times, therefore, the evidence for the explanation of the *terhatu* as a provision for the widow or divorcée is rather scanty. As a theory of the original purpose of the *terhatu* and *mohar* this view has even less in its favor. It is much too sophisticated to seem likely in primitive society, while it is precisely the sort of explanation we have learned to expect when an ancient institution receives a new interpretation in accord with relatively advanced social ideals. Such generalizations as this, to be sure, would have little force in the face of definite evidence to the contrary, but since there is no such evidence, they deserve consideration. While the time has gone by when a neat evolutionary scheme could be presupposed as the framework into which all human history had to fit, and while the possibility of regress as well as progress must be recognized, the development of a bride-price or compensatory gift into a fund for the widow's support is more probable and more easily paralleled than the degeneration of such a fund into a bride-price which Gordon assumes.

6. *Security for the Fulfilment of the Contract.*

The *terhatu*, like the *mohar*, was often if not usually given in advance of marriage. This fact has led to the interpretation of the *terhatu* as a pledge. Cuq holds that the *terhatu*, while originally a bride-price, had become by the time of Hammurabi a guarantee that the marriage-agreement would be carried through.⁶⁴ Eberharter maintains that this was its original purpose.⁶⁵ If so, the practice of giving a *terhatu* would be the result of separating betrothal and marriage. The bridegroom would post a forfeit, so to speak, binding himself to carry out his promise to marry the girl. Now the practice of depositing a sum of money or an object of value as a pledge for the payment of a debt was well known in the ancient Orient. Judah's ring and staff in Genesis 38 may serve as an example; one recalls also the law prohibiting a creditor to hold overnight a poor man's garment left with him as a pledge.⁶⁶ That the *terhatu*, when paid at betrothal, actually served such a purpose is directly attested by the Code of Hammurabi: a man who refused to marry a girl after having given the *terhatu* to her father forfeited what he had paid (§ 159).

⁶² BCLD 272 f.

⁶³ V. s., p. 54.

⁶⁴ E. Cuq, RB 1905, p. 356.

⁶⁵ EEF 104-6.

⁶⁶ Ex. 22:26; cp. Deut. 24:10-13.

With this, however, went another requirement which is not explained by the theory that the *terhatu* was merely a pledge. Not only the bridegroom but also the bride's father was bound to the agreement. If he refused to give his daughter after having received the *terhatu*, he had to give back double the amount he had received (§ 161). The recipient of a pledge has no such obligation; he is the creditor, not the debtor. To create mutual obligations requires the exchange of pledges by both parties, yet here the bridegroom alone is required to deposit the money, while the girl's father merely receives it. The function of the *terhatu* as a pledge must therefore have been secondary.

More important, and quite fatal to the explanation of the *terhatu* as a pledge, is the fact that the *terhatu* was not returned to the bridegroom when the contract was fulfilled. A pledge is merely a temporary deposit, given as security for the payment of a debt, and must be given back when the debt is paid.⁶⁷ This was certainly not the case with the *terhatu*. A few documents, it is true, have been interpreted as showing that the *terhatu* was sometimes returned when the marriage took place. In three Old Babylonian marriage contracts the *terhatu* is said to have been bound in the bride's *qannu*, with the stipulation that when it is given back to her husband her children shall inherit her property.⁶⁸ A fourth tablet states that in like circumstances the bridegroom's father is to receive the *terhatu*, doubtless because he had paid it for his son.⁶⁹ Koschaker takes the clause regarding the *qannu* to mean that the bride did not receive the *terhatu* as a dowry but merely, like a messenger, brought it back to her husband. He does not admit, however, that the *terhatu* was therefore only a pledge held by the bride's father until the wedding, and then returned; it was still essentially a bride-price, but in these instances was given back for the special purpose of securing the children's right to inherit their mother's property. The *terhatu* can thus, he holds, be regarded as a pledge only in the sense that it represents and defines the full obligation of the parties concerned, so that no further liability is entailed by breach of contract.⁷⁰

As a matter of fact, it is unlikely that even these few documents really imply the return of the *terhatu* to the husband at the time of marriage. They probably mean that the *terhatu*, when bound in the *qannu*, belonged to the wife as long as she lived but reverted at her death to her husband, and only when it had been repaid could the children inherit

⁶⁷ So, e. g., in Gen. 38: 20.

⁶⁸ SUA no. 209; KUH iii, nos. 10, 483. Cf. BCLD 271.

⁶⁹ KUH iii, no. 9.

⁷⁰ KRS 141.

whatever other property their mother possessed.⁷¹ The explanation of the *terḥatu* as a pledge has therefore no support. It would not apply anyway, of course, when the *terḥatu* was not paid in advance.

Quite distinct from the pledge, though similar, is the earnest. Instead of an object or sum merely deposited as security and returnable when the debt is paid, the earnest is a part-payment of the debt itself, serving also as an acknowledgment of the obligation and a guarantee for the payment of the balance. When the object for which the earnest is given in part-payment has not yet been delivered, the earnest acts as a "binder," its acceptance obligating the recipient to deliver the object. This practice has been cited by Koschaker in connection with his own theory of the *terḥatu*, with results that are rather confusing. A rather full discussion will be necessary to clarify the matter.

Taking his departure from the requirements of the Code of Hammurabi §§ 159 and 161, regarding the liability of the bridegroom and the bride's father in case of default, Koschaker observes that what is true here of the *terḥatu* is true also of the purchase-price in sale.⁷² In Hellenistic, Roman, Syrian-Roman, and Byzantine law-codes a purchaser who pays either the full price or an *arrha* (earnest) in advance loses it if he withdraws from the agreement, while the seller who fails to deliver the object for which he has received such a payment or *arrha* must return double the amount he has received. This requirement is nowhere definitely attested for Babylonian law, but Koschaker holds that it must have been in force, and in a few documents he finds evidence of it.⁷³ Two contracts in particular deal with advance payments, which, in case the goods are not delivered, are to be returned, singly in the one case but doubly in the other.⁷⁴ Assuming that originally the marriage-transaction consisted simply in the exchange of the girl and the bride-price, Koschaker infers that when betrothal was separated from marriage and the *terḥatu* was paid in advance it became an *arrha*; he therefore speaks of this arrangement as "arrhal betrothal."⁷⁵

It is clear that arrhal betrothal, as Koschaker sees it, is a form of marriage by purchase. Cuq also regards the *terḥatu* as an *arrha spon-*

⁷¹ Schorr (SUA p. 3) supposes that the *terḥatu* itself was inherited by the children, but this inference is not justified by his evidence. What the children inherited was the *nudunnū* or *scriqtu* brought by their mother from her father's home.

⁷² KRS 130 ff.

⁷³ Ibid. 137 f.

⁷⁴ SUA nos. 105 and 100 respectively.

⁷⁵ Koschaker points out that the return of the doubled bride-price is known in Syrian and Byzantine laws (KRS 130).

salica, but only in the sense of a betrothal gift,⁷⁶ comparable to the bridegroom's gift in Talmudic Judaism. This conception of the *terhatu*, Koschaker points out, is invalidated by the fact that sometimes the *terhatu* was not given until the time of the wedding, its receipt being acknowledged in some contracts immediately following the *traditio puellae*.⁷⁷ In such cases it could not be a betrothal gift, and the provisions of the Code of Hammurabi §§ 159-61 would not be applicable, because only divorce, not mere withdrawal with forfeiture of the *terhatu*, could now dissolve the marriage. The only formula which fits both types of cases, according to Koschaker, is that the *terhatu* is a bride-price, payable either at betrothal or at marriage.⁷⁸ Just as credit became necessary in commercial transactions, and the payment of the price became separated from the delivery of the goods, so betrothal by the payment of the *terhatu* became separated from marriage, a legally binding contract being established in both cases by the payment.⁷⁹

In the Assyrian Code as well as the Code of Hammurabi Koschaker sees evidence of arrhal betrothal.⁸⁰ The laws which he adduces, it is true, do not mention the *terhatu*, which, as we have seen, appears only once in the Assyrian Code. In §§ 30-1 and 42-3, however, the bridegroom's father is said to have brought a "gift" (*biblu*, *zubullū*) or "presents" (*huruppāte*)⁸¹ to the father of the bride, and the right to the girl has thus been acquired. The relation of these gifts to the *terhatu* is not entirely clear. The closest parallels to these laws in the Code of Hammurabi (§§ 159-61) use the expression "bring a *biblu* to the house of his father-in-law and give a *terhatu*." A distinction between the *biblu* and the *terhatu* seems here to be implied; on the other hand, the laws cover "everything that was brought," so that *terhatu* and *biblu* are at least treated alike. This fact is urged by Koschaker against the common view that the *biblu* was a betrothal-gift to the bride. According to Syrian law, he notes, an *arrha* had to be returned twofold by a defaulting guardian, but no such twofold restitution was required in the case of a mere betrothal-present.

Koschaker does not, however, regard the *biblu* and *terhatu* as identical: he sees in the asyndetic collocation of the two terms an indication that they represent two different kinds of gift. One difference between the *terhatu* and the *biblu*, he suggests, was that the former was paid in money, whereas the *biblu* might consist of other things. As a matter

⁷⁶ RB 1905, pp. 303, 360.

⁷⁸ Ibid. 137.

⁷⁷ KRS 131, 136.

⁷⁹ Ibid. 139, 190.

⁸⁰ KQU 51-3.

⁸¹ The *huruppāte* seem to have been peculiar to patrician marriage, with which §§ 42-3 deal (DMAL 180 f.).

of fact, however, the *terhatu* itself might be paid in goods or in service, at Nuzi if not in Babylonia.⁸² A second point of distinction, according to Koschaker, was that the *terhatu* might be paid either in advance or at the time of the wedding, while the *biblu* was always given in advance. Lacking definite evidence, this distinction is purely conjectural. So too is a third suggestion, that the *terhatu* was a matter of law, the *biblu* merely of custom. In general Koschaker concludes that the *biblu* was probably a *Werbungsgeschenk* over and above the *terhatu*.⁸³ Equally probable, though equally unproved, is Ebeling's suggestion that the *biblu* consisted of the victuals provided by the bridegroom or his father for the feast at which the *terhatu* was delivered.⁸⁴ Clearly the question of the relation between *terhatu* and *biblu* is still open. What is true of the one, therefore, need not apply to the other. Their function and treatment, however, are at least similar.

As Koschaker points out, the terms "wife," "daughter-in-law," and "father-in-law" are used in these laws precisely as though the marriage had taken place, though it is expressly said that the girl has not been "given."⁸⁵ Her father may still refuse to give her, in which case the bridegroom's father may either "take his daughter-in-law and give her to his son," or take back what he has "brought" (with the exception of edible things, which have presumably been consumed by both parties at the feast in connection with the transaction). If the bride dies before she is "given," the bridegroom has the option of marrying another daughter of his father-in-law or reclaiming his gifts (again excepting things edible). If the bridegroom dies, his father may give the girl to another son; under certain circumstances even a son of the deceased bridegroom may marry the bride. All this shows that while a considerable interval might elapse between the betrothal and the wedding, the receipt of the gifts created an obligation like that of a merchant who has received the price for his goods.

Koschaker's theory of arrhal betrothal has received a searching criticism at the hands of Driver and Miles. As against the conception of the *terhatu* as an *arrha* they argue that the earnest is a device employed by peoples who did not use written contracts, whereas the Babylonians and Assyrians used such documents.⁸⁶ It is conceivable, however, that arrhal betrothal was older than writing and survived after written contracts were introduced.

⁸² BCLD 200.

⁸³ KRS 132 f.

⁸⁴ EER 282.

⁸⁵ Koschaker observes (KRS 143-5) that this is true not only of the Code of Hammurabi, the Assyrian Code, and Deuteronomy, but also of the Amarna letters (Knudtzon, no. 19).

⁸⁶ DMAL 150.

More impressive, at first sight, is the claim that no Babylonian or Assyrian contract shows any trace of the conception of an earnest. In neither Akkadian nor Hebrew, say Driver and Miles, is there any word for an earnest;⁸⁷ the Greek word ἀρραβών (whence the Latin *arrhabo*, *arrha*) is Semitic in origin, but its Semitic original meant a pledge, not an earnest.⁸⁸ At this point the dispute becomes largely a matter of words, and Koschaker himself must be held responsible. His analogy with Babylonian sale has in view not a part-payment but a payment of the whole price in advance, and his theory of arrhal betrothal means, not that a part of the bride-price was paid at betrothal, and the rest at marriage, but that the whole payment was made at betrothal.⁸⁹ Unfortunately he has not made this distinction clear. Sometimes he speaks of the *arrha* as an *Anzahlung*, but in designating the *terḥatu* as an *arrha* he clearly does not mean that it was only a part-payment of the bride-price. The arguments of Driver and Miles against regarding the *terḥatu* as an earnest, therefore, apply rather to Koschaker's language than to his idea.

Something more nearly resembling an earnest is involved in the theory of Lewy, who maintains that the *zubullū* brought about an arrhal betrothal, but that the final transfer of the wife to the authority of her husband was effected by the *nudunnū*, which he interprets as the "giving present," i. e. the present in consideration of which the woman was "given" (*nadānu*).⁹⁰ If the *zubullū* represents a "down-payment" or "instalment" of the full price, and the *nudunnū* is the payment of the balance, we have here a true case of the earnest. This is not what Lewy means, however, and in any case his view of the *nudunnū* is untenable, as has already been shown.⁹¹

Driver and Miles admit that the requirements of the Code of Hammurabi § 159 are in accord with the presuppositions of an arrhal transaction, but they hold that what is really implied here, though not in the Assyrian Code, is simply a contract in which the parties agree on the damages to be exacted in case of default.⁹² The fact that the bride's father must not only return the gift but add to it an equal amount if

⁸⁷ Loc. cit.

⁸⁸ Op. cit. 144 and note. In Gen. 38 (the only passage in the Old Testament in which *ʿerāḇōn* is used) a pledge, not an earnest, is clearly indicated.

⁸⁹ One of the Amarna letters (Knudtzon, no. 27, ap. KRS 144) states that the *terḥatu* is only a part-payment: ten times more will be given if the girl is sent and pleases the Pharaoh. We can hardly regard this, however, as a normal case.

⁹⁰ ZA xxxvi. 144 f.

⁹¹ V. s., p. 45.

⁹² DMAL 150.

he breaks the contract makes the actual penalty the same for either party, since the bridegroom has already given this amount and forfeits it if it is he who defaults. The situation differs from a mere agreement regarding damages, however, in that the bridegroom makes the payment anyway and does not recover it when he fulfils the contract.

From other directions also Koschaker's theory has been subjected to heavy fire by Driver and Miles. Koschaker left one gate unguarded: he admitted that his conception of marriage as being legally constituted by the *traditio puellae* after arrhal betrothal did not fit those marriages in which the wife remained in her father's house, i. e. in which there was no *traditio* to the house of her husband at all. Now it is just this kind of marriage that is contemplated by the only section of the Assyrian Code which mentions the *terhatu* at all (§ 38). Koschaker attempts to meet this difficulty by contending that the Assyrian *terhatu* had ceased to be a bride-price and had become a gift to the girl herself, but Driver and Miles have effectively refuted this argument.⁹³ That the *traditio puellae* was necessary seems to be indicated by the statement of § 30 that the woman "has not been given," though the contract has been made and the bridegroom's father can compel the father of the bride to fulfil it. Driver and Miles have shown, however, that the verb "give" does not necessarily imply an actual transfer to the husband's house.⁹⁴ It must mean more, to be sure, than that the girl's father has consented to the marriage, for that is already involved in the contract. Driver and Miles contend that even if a transfer from the father's house to that of the husband is contemplated, the marriage may already have been completed. But that is impossible: whatever is or is not implied, the statement that the woman "has not been given" certainly means that the bridegroom has not yet received her.

In any case it is unnecessary to insist on the delivery of the bride to her husband's house. What was essential was the delivery of the bride to her husband, whether she was taken to his house or he was received into her father's house and accorded the *ius mariti* over her. With this modification the theory of Koschaker applies as well to *errēbu*-marriage as to *ba'al*-marriage.

Instead of arrhal betrothal another category is proposed by Driver and Miles as fitting the implications of the Assyrian Code §§ 30-1 and 42-3, namely, the institution of adoption "for daughter-in-law-ship" (*ana kallatūti*), so profusely illustrated by the tablets from Nuzi.⁹⁵ This

⁹³ DMAL 146-8; v. s., p. 45. On the two types of marriage and the bearing of AC § 38 on *errēbu*-marriage see also BCLD 201 f.

⁹⁴ DMAL 151 f.

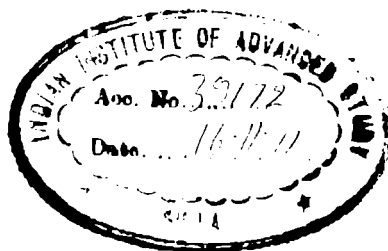
⁹⁵ DMAL 149. Cf. BCLD 209 ff.

point is undoubtedly well taken, especially as regards §§ 42-3. The use of these laws as attesting arrhal betrothal in Assyria is therefore decidedly questionable.

The net result of all these considerations for the validity of Koschaker's theory of arrhal betrothal is that assuming the practice of marriage by purchase we may well regard the *terhatu* as an *arrha* when it is given in advance, in the sense that it is an advance payment obligating the recipient to deliver the goods; but as soon as this has been said, it is obvious that again the hypothesis of a gift, which places the recipient under an obligation to the giver, furnishes a still simpler explanation. That in the developed economic systems of Nuzian and Assyrian civilization this practice became closely conformed to the customs connected with sale and purchase is only what we should expect. The use of the *terhatu* as an *arrha* in connection with betrothal would be an example of this development.

7. Conclusion.

We have examined six different explanations which have been offered for the *mohar* or *terhatu*, and we have found that with varying degrees of probability two or three of them are applicable to particular periods or cultures. For the original purposes and significance of the *mohar*, however, none of them offers so satisfactory an explanation as the hypothesis which interprets it by the primitive conceptions of compensation and the gift.



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