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Inheritance Law of and through Women in the Middle Assyrian Period

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1. Introduction

The principles of inheritance laws rely on the basis of a familial pattern, created by the marriage of two individuals. Women appearing in the context of inheritance are related to men in one way or another, either as daughters, wives, or widows. We know almost nothing about other women who were economically and juridically independent, such as prostitutes, brewers, spinsters and the like. Thus, the picture that emerges from the texts seems to represent only one aspect of the question, perhaps because it was the most common one or because its legal implications were considered significant.

Like many other legal systems, Mesopotamian inheritance laws regarding women aim basically at keeping the immovable property given to a woman inside her own family. Dowries and inheritance shares are then carefully protected, at least theoretically, against any attempt by an outsider (in practice, her in-laws) to acquire ownership of the woman's estate. Conversely, property given by the husband to his wife had to remain in the man's lineage, that is, be transferred to the children or return to his own family. This is the situation described, for instance, in medieval European customary law by the formula *paterna paternis, materna maternis*.

The means to achieve this general principle differ noticeably from one area to another during the second millennium BCE. The use of the will, for example, seems to be prevalent in documents from Syria (Emar, Nuzi, Assur), while no testament has to date been found in Babylonia. This lack of documentation might be accidental, either because such tablets have not yet been uncovered, or due to the fact that, in principle, written form was not a condition for the validity of a contract or will. But it might also be an indication of the existence of two juridical systems, roughly delimited to the "North" (Syria, northern Iraq) and the "South" (Babylonia). By way of illustration, let us consider the situation of the widow. The Middle Assyrian testament allows the appointment of a legatee (see below) which is especially important for guaranteeing the wife's maintenance after the death of her husband. The Babylonian Laws of Hammu-rabi states that if the husband did not assign a marital gift to his wife, she is entitled to receive an heir's share in his estate (LH §172). A comparable rule is not attested in the Middle Assyrian Laws (MAL). The drafting of a will thus appears necessary to fill the gap: if the man dies intestate, his widow has no rights to his property. Her future depends mainly on the discretion of her husband. In this process, it is the volition of the individual that sets in motion juridical creativity. A single person has thus considerable powers for constructing his own rules of law. Other examples of such powers are known in this northern (= Syrian) area,¹ while the South (= Babylonia) seems to be less forthcoming in this respect.²

¹ See for instance some loan contracts in which the debtor relinquishes the benefit of a decree (*andurāru*) for the general cancellation of debts: for Mari, *ARM VIII* 33 ll. 13-14 (Durand 1982:107 fn. 1); for Terqa, Rouault 1984: n° 3 ll. 21-22.

² Assyriologists have long acknowledged the peculiarities of the legal tablets from the "North," especially those from Nuzi. But those texts are usually seen as exceptions to the principles depicted in the Babylonian documents.

1.1 Sources

The Middle Assyrian period covers the second half of the second millennium. Our knowledge of the juridical life and principles of this period derives from a collection of laws (MAL) and from a large number of deeds and contracts, mainly loans and sales. MAL³ are a collection of fourteen tablets, some of them very fragmentary, compiled in the manner of modern “restatements,” which organize laws broadly by subject matter. Thus Tablet A, the best preserved, sets out laws relating to women; Tablet B deals principally with landed property, and C+G with moveable property. Most of these documents are copies from Assur from the eleventh century, based on fourteenth century originals.

There are relatively few sources dealing with inheritance: several law-code provisions (Tablets A and B) and only four wills. Three of those testaments are related to women (one from Assur, two from Rimah = ancient Qaṣarâ or Karanâ), but the juridical nature of one of those tablets is questionable, so that we might be left with only two written sources on the subject. There is no direct treatment of the inheritance law of women in MAL, but eight paragraphs of Tablet A are concerned with the transmission of marital property (jewels, marital gift), dowry, and care of the widow.

Given the small number of testaments, we wonder whether they reflect typical practice or an exception. A written form is not compulsory for testaments (or for any other contract, especially in family law): we know from some Old Assyrian letters (nineteenth century) that one’s last will and testament could be uttered before witnesses.⁴ Besides, the Code of Hammurabi allows a father to favor one of his sons with an extra share of the estate,⁵ so that the devolution of family property does not necessarily follow the pattern of intestacy.⁶ But such practices are still rarely known for the Babylonian area, compared with the more current use of the testament in Emar, Nuzi and Munbāqa (= ancient Ekalte, near Aleppo), which might indicate that “northern” law developed a peculiar approach to inheritance law.

1.2 Form

Wilcke⁷ has noticed a change in the formulation of Assyrian testaments: Old Assyrian texts start with the formula “X has made a will concerning his house (of Kaniš)” and then proceed in the first person singular (I, my, and so on); Middle Assyrian texts differ because of an overall objective style (Emar and Nuzi mix both types) and a different introductory formula: “X has made a will for Y.” The shift would mean that the will is no longer concerned with property but with people under the authority of the testator. The new pattern would allow the appointment of a legatee receiving part of the assets of the testator on certain conditions.

1.3 Main Features

As in other societies, the law of succession deals both with family law and property law. In the sources, the women involved are either the daughter or the wife of the testator. What is at stake in those documents is the transmission of the male estate to his progeny,

This interpretation derives from a very common historical view, assuming a Sumero-Babylonian core spreading its culture and institutions all over the cuneiform world. This basic division between “center” and “periphery” is now challenged by the publication of an increasing number of documents from Mari, Ebla, Emar and other Syrian sites from the third and second millennia BCE. Those kingdoms developed several features which make them quite different from the Sumero-Babylonian area in many respects.

³ See Roth 1995:153-94; Driver & Miles 1935; Cardascia 1969.

⁴ See Michel 2001 n° 376.

⁵ § 165 LH.

⁶ See for instance the OB letter Di 1194 (Janssen:1992), belonging to the archives of Inanna-mansum, where the bequest from father to son of an office and of the property attached to it is described through a symbolic gesture and an oral declaration. It seems here that the sharing of the estate was effected partly through intestacy and partly on the basis of a will.

⁷ Wilcke 1976:198-99.

directly or through his wife. In the latter case, the right of the widow to marry again might threaten the rights of the children to their paternal estate. This is why Wilcke argued that the widow could marry again, but inside the family, if she wanted to keep the estate inherited from her husband.⁸

Moreover, there seems to be a general rule for moveable property that the property is supposed to belong to the owner of the place where it is located. (This principle is common to many juridical systems, to this day). Some Middle Assyrian marriage laws can be explained against this background, which leads to reconsideration of the occurrences of the verb *erēbu* “to enter” in MAL.

2. Sources

2.1 Middle Assyrian Laws

A §25 (KAV 1 iii 82-94)

(82) If a woman is residing in her father’s house (83) and her husband is dead, (84) (and) the brothers of her husband have not divided (the paternal estate) (85) and she has no son, (88) the brothers of her husband (89) who have not divided shall take (86) all the *dumāqu*-jewels that her husband (87) bestowed upon her (88) (that) are not missing. (90) As for the rest (of the *dumāqu*), (90-91) they shall move the (images of the) gods past, (91) they shall provide proof (92) (and) they shall take (the *dumāqu*). (93-94) They shall not be seized for the river ordeal or the oath.

A §26 (KAV 1 iii 95-102)

(95) If a woman is residing in her father’s house (96) and her husband is dead, (99-100) if there are sons of her husband, they shall take (97) all the *dumāqu*-jewels (98) that her husband bestowed upon her.

(101) If there are no sons of her husband, (102) she herself shall take (the *dumāqu*).

A §27 (KAV 1 iii 103-108)

(103) If a woman is residing in the house of her father, (104) (and) her husband visits her regularly, (105-107) all the marriage settlement which her husband gave her belongs to himself, and he may take it. (107-108) He shall have no claim on what belongs to the house of her father.

A §29 (KAV 1 iv 11-19)

(11) If a woman has entered the house of her husband, (12-13) her dowry and everything she brought with her from the house of her father, (14-15) and also what her father-in-law gave to her upon her entering, (16) is clear for her sons. (17) The sons of her father-in-law shall not claim (those goods).

(18) But if her husband impounds it, (19) he shall give it to his sons as he wishes.

A §35 (KAV 1 iv 75-81)

(75) If a widow (76) should enter the house of a man, (77) whatever she brought with her, (78) the whole belongs to her husband.

(79) And if a man should enter the house of a woman, (80) whatever he brought with him, (81) the whole belongs to the woman.

A §38 (KAV 1 v 20-25)

(20) If a woman is residing in the house of her father (21) and her husband divorces her, (23) he shall take (22) the *dumāqu*-jewels that he himself bestowed upon her. (24) He shall not claim (23) the bridewealth (24) which he brought; (25) it is clear for the woman.

⁸ Wilcke 1985:309.

A §43 (KAV 1 vi 19-39)

(19) If a man either has poured oil on the head (of the daughter of a man: *mārat a'cle*) (20) or brought (dishes for) the banquet, (21) (and then) the son to whom he assigned the wife (22) either died or fled, (23-26) he shall give her to whichever of his remaining sons he wishes, from the oldest to the youngest aged (at least) ten.

(27-28) If the father has died and the son to whom he assigned the wife has died too, (29-30) (if) there is a son of the deceased son aged ten, he shall marry her.

(31-32) If the sons of the (dead) son are less than ten years old, (33) the father of the daughter shall give his daughter if he wishes (to one of them) (34-35) and if he wishes, he shall make a full and equal return (of the gifts given).

(36-38) If there is no son, he shall return as much as he received, precious stones or anything not edible. (39) But he shall not return what is edible.

A §46 (KAV 1 vi 89-112)

(89) If a woman whose husband is dead (90-91) does not move out of her house upon the death of her husband: (92) if her husband had not deeded her anything in writing, (93-94) she shall reside in the house of (one of) her sons, wherever she chooses. (95) The sons of her husband shall provide for her. (96-98) They shall draw up an agreement for her provisions and her drink, as for a spouse whom they love.

(99) If she is a second wife (100) and has no sons, (101) she shall reside with one (of her husband's sons); (102) they shall provide for her in common. (103) If she has sons, (104-105) and the sons of a prior wife do not agree to provide for her, (105-107) she shall reside in a house of (one of) her own sons, wherever she chooses. (107-108) Her own sons shall provide for her and she shall do service for them.

(109-112) And if among her husband's sons there is one who is willing to marry her, [he is the one who shall provide for her; her own sons] shall not provide for her.

1.2. Testaments

[1] TR 105 (Saggs 1968, pl. lxviii)

(1-2) Seal of ...; seal of Adad-dayyān.

(3) Adad-dayyān, son of ... (4) son of Sîn-nādin-ahhē (5) has made a will for his house.

(6) Aššur-šuma-u[ur his son (7) shall take 2 shares (8) and the rest [of my children], (9) be they few or [many], (10) man like woman, [shall take] one [share]. (11) And after ... (13) ... house ...

(17) ... her responsibility ... (18) he shall not do.

(19-24) Witnesses. Date?

[2] KAJ 9

(1-3) I[uriya, son of I...., has made a will for Nasigtu his wife.

(4) 2 women, 1 plowman, x ox, 1 cart (5) 2 bur of field on the opposite side (6) ... of/her ... 20 ewes (7) 50 ..., 5 homer of flour, 5 homer of spelt (8) in ... she shall give to her daughter. (9) ... inside ... (10) ... chairs (11-12) ... (14) she [shall give] (13) 1 bronze dish to the son of Usanā'u. [Her ...] (15) her clothes and [the items] (16) in her possession, nobody (17) shall approach it. (18) All of this, [which he established], (19) she shall choose and take. (20) All of this ... (21-22) I[uriya has given to Nasigtu his wife.

(23) As long as she lives, (24) she shall possess and enjoy (it). (25) In the future, they shall belong to (26) Nabû-zaqip, her son. (27) She shall not give them to an outsider. (28-29) She shall not dwell with a (new) husband. (29-30) If she dwells with a (new) [husband], she shall leave empty-handed.

(31-32) Witnesses

(33-34) Date? (35) Seals.

[3] TR 2037 (Saggs 1968:163-164)

(1) ErCb-ilu, son of AthC-nādā, (2) in full agreement with himself, (3-4) has made a will for Takla-šemât, his daughter.

(4) The ... of Ummi-Ištar ... (5) ... city ... (7) and Ištar-bēla-u[rC, her daughter (8) K...-Ištar, fNP ... (9) ... Ištar-balāC, s̄āb-pC-bēliya,

(10) 1 ... [and the equip]ment of the donkey,

(11) the house of Aššur-rCmannC (12) son of Kidin-Aššur [son] of Aššur-kettC, (13) who, according to the words of the tablets (14) of Ilu-ēriš, son of Adad-nā[ir, (15) which ErCb-ilu has taken, (16) (is) adjacent to the house of Š..., (17) adjacent to the lot of Aššur-rCmannC (18) which ErCb-ilu has cut off, (19) adjacent to the main square;

(20) 2 bur of field, measured with the rope, (in) the land of the locality (21) of Idû; she shall *flood*[?] at her well (21) the upper part (of the land) ... Qattara[?]

(24) ... chair ...; (25) 1 chair ... (26) 1 bed, 1 millstone with its upper stone, (27) 1 stone for refined (flour), (28) x bronze bowls, x bronze bowls, (29) 2 ... bronze, 2 bronze cups, (30) 1 bronze mold[?], 1 bronze incense burner,

(31) 15 minas for ... (32) for ... and (33-34) no one should approach the items which are in her possession.

(35) 1 ... (34-36) (and) no one shall deprive her of the bed of her childhood. (36) 1 copper[?] goblet (37) of the meal(s) ...

(38) All of this, ErCb-ilu (39) has given to Takla-šemât. <If> (40) Takla-šemât has <sons>, they shall take the house. (41) If she does not [have so]ns, [it will be for the so]ns of ErCb-ilu. (42) She shall not give[?] (it) to an outsider[?].

(43-46) Witnesses

(47) Date

(49-52) Seals of Urad-Šeru'a, Šadâna-aha-iddina, Ibašši-ša-Aššur and Šamaš-nādin-ahhē.

3. Inheritance by Women

The topic is known only from documents of practice. MAL do not refer to the subject, so we cannot establish to what extent the wills reflect the normal rules or differ from them.

3.1 Inheritance by Daughters

Two wills deal with inheritance by daughters: [1] and [3].

Text [1] states that the oldest son takes two shares of the estate and that all other children, sons or daughters, shall divide the remaining estate equally (ll. 6-10). Since we might expect that a will would express the special intentions of its author, we could understand the clauses of the document as exceptions of some kind to the rules of intestate succession. On the other hand, the assignment of a double share to the eldest son seems to be the basic rule of Assyrian law of inheritance (MAL B §1). The same is true for the equal shares among the other children (*ibid.*). The exception could be the naming of the daughter among the heirs, but we have no explicit evidence of the opposite rule, namely systematic denial of inheritance rights to daughters. Accordingly, ll. 6-10 seem to state a general principle. The special arrangement might be expressed from ll. 11 on, which unfortunately are damaged. This section seems to deal with the family house and perhaps also relieve the daughter of liability for her father's debts.

Though the text refers to dividing the estate, the children could choose to stay undivided after the death of the testator. Indivision is in fact the most common situation; several laws of MAL B refer to it (§§2-5), and also a record of arbitration.⁹

According to the general formulation of ll. 6-10, the whole estate of the writer is being shared among his children, which means that a daughter (or this daughter?) might inherit movable and immovable property. But the contents of the lacuna in the tablet might alter this conclusion.

Text [3] lists the goods given by a father to his daughter. We cannot say with certainty that the tablet is a will, since the introductory formula is broken. Instead of “to set the fate” (*šCmti šīāmu*), which is typical of a testament, the lacuna could read *širki šarāku* “to offer a dowry.” But, as Wilcke rightly noted,¹⁰ some of the statements in the document clearly become effective after the death of the writer. The tablet is then a *donatio mortis causa* or *donatio inter vivos*, with joint will.¹¹ In any case, the doubtful nature of the text underlies the ambiguity of the dowry: the assets given to the woman for her marriage are usually seen as an anticipated inheritance – they represent her share given before the death of the father and not after. In text [3], perhaps because the girl is still too young to be married off while her father is getting old or ill, the purpose of the author is to assign a dowry to his daughter; but formally speaking, the pattern is the one of a will because of the requirement of keeping the property within the lineage. Both institutions are mixed on technical grounds, stressing the flexibility of those juridical classifications to fit the specific situation.

The formula *ina migrāt raminišu* “in full agreement with himself,” stresses the gratuitous nature of the transaction, whereby the author relinquishes his right to the property without a *quid pro quo*.¹² It is tempting to compare this clause with the Middle Babylonian phrase *ina bulšišu/bulšutišu*, “being alive,” found in some wills from Emar and Munbāqa¹³ and whose meaning is not completely clear. If it is to be translated “while still alive,” that is “close to death,” then the tablet would preserve the very last wishes of the dying testator; but if it parallels the Middle Assyrian formula, then it would mean “sound in mind and body,” underlining the full consent of the writer.

⁹ See the text published by Weidner 1963:122, although we do not know if a will had been written in this case.

¹⁰ Wilcke 1976: 227.

¹¹ KAJ 8 is another example of such a combination of *donatio* and will.

¹² Wilcke 1976:220-22.

¹³ Mayer 2001:n° 19, 65,75 and 92.

The daughter receives a house (ll. 11-19), a field (ll. 20-21), a donkey and its equipment (l. 10), and some domestic items and furniture (ll. 24-37), including her own bed (ll. 34-36). It seems that the items of moveable property have already been given to her: ll. 33-34 prohibit claims upon the domestic items which are in her possession. They belong to her entirely and permanently, which is the usual practice with dowries. On the other hand, her rights to the house are only transitory: it is to be transferred to her sons if she has any, or to her brothers (ll. 40-41). The statement in l. 42, if the reading is correct, connects inheritance of the house with the duty to keep it within the family. The presence of two brothers of the girl among the witnesses makes sure that they will not challenge the deed and ensures control by the male members of the family over the fate of the immovable property.

It is difficult to say whether this text is typical of the inheritance rights of the daughter of a wealthy family. It might be representative of a strategy aiming both at ensuring the daughter's matrimonial future while preserving the cohesion of the paternal estate.

3.2 Inheritance by Wives

MAL A deal incidentally with the matter. The rule, inferred from §§27 and 46, is that the wife has no claim to the estate of her husband; only a written deed of the latter can make her his heir. If the living husband did not assign anything to his wife, care for the widow fell to the sons (§46). She could claim the *dumāqu*-jewels given by her husband only in the absence of sons (§ 26) and brothers of the deceased (§ 25).

In MAL A §27, a wife dwells in the house of her father and her husband visits her regularly. The law states that the husband can claim the whole of the marital gift (*nudunnû*) that he gave her, but has no claim to the assets of his father-in-law. Scholars usually assume that the law tacitly considers the case of a divorce.¹⁴ One might rather understand that the law provides an exception to a basic rule of movable property by which goods are deemed to belong to the owner of the house where they are found. All the occurrences in MAL of the verb *erēbu* (“to enter”) in connection with marriage refer to property law (rather than to matrimonial relationships). Entering the house of someone means to relinquish one’s own rights to the goods brought with (see MAL A §35 below). The husband of MAL A §27, who regularly enters his in-law’s house, should be deprived of his rights to the marital gift. As an exception, the lawgiver admits that the father-in-law is not the owner of the assets assigned by the husband, because of their juridical nature (gift given by the husband to his wife). The main goal of the law is to enforce this exception, even if a divorce is not at stake. For instance, a creditor of the father-in-law would not be allowed to seize those goods; on the contrary, a husband’s creditor could seize them in the house of the father-in-law.

Text [2], a will written for a wife by her husband, gives us an idea of what kind of goods a man could assign as a marital gift. Although the tablet is badly damaged, it seems that there is no house in the items listed, but only land, animals, servants, domestic utensils, furniture, and grain. Just like the daughter of text [3], the widow has the exclusive enjoyment of that property during her lifetime (life interest). But she does not have full power of disposal over them, since they will pass to a son (ll. 25-27) whose name is given in the text. The prohibition upon transferring the marital gift to “another” (l. 27) includes third persons or other possible children.

The will also states that if the widow “dwells with a (new) husband, she shall leave empty handed” (ll. 29-30). This clause probably recalls the situation described in MAL A §35. This provision states that the widow who “enters the house of a man” loses her rights to the property she brings in; it belongs thereafter to her new husband. Both text [2] and MAL A §35 carefully avoid use of the verb *ahāzu* “to take (in marriage),” which means *prima facie* that we are not dealing with marriage but with some *de facto* relationship, close to our modern concubinage. On the other hand, the man is said to be a *mutu* “husband.” This inner contradiction leads to two different issues: either *ahāzu* has a very limited use, qualifying only the first wedding of a person, so that it could not fit the situation of the widow getting married a second time; or *mutu* has a wide meaning, as a designation for a married man or an informal partner in the case of the widow. MAL A §35 considers also the reverse case, in which a man enters the house of a woman and equally relinquishes his rights to the property he brings in. Since, in this latter case, the woman is said to be a *sinniltu* “woman” and not an *aššatu* “wife,” one would understand the whole paragraph with reference with a *de facto* and not *de iure* relationship.¹⁵ Indeed, it seems that a widow cannot get married according to the *ahāzu*-process. Assuming that *ahāzu* has a narrow meaning, the verb defines strictly the first wedding of two people, with the bringing of the *terhatu* (gift from the groom) and of the dowry. Other matrimonial situations would fall into other types. The case of the widow is one example, among others depicted in MAL. In MAL A §55, for instance (rape of a young girl), the victim is given to the rapist not “as a wife” (*kī aššati*) but “in a marriage-like relationship”

¹⁴ But see the hesitations of Saporetti 1984:55 n. 40.

¹⁵ Cardascia 1969:183-84.

(*kī ahuzzete*).¹⁶ Likewise, MAL A §41 (marriage of a married man with his concubine) describes the veiling of the woman in the presence of witnesses without using the verb *ahāzu*. Returning to MAL A §35, the verb *erēbu* seems to describe such an alternative type, some kind of marriage-like relationship, which cannot be called “marriage” by the lawgiver, but for which there is no proper Assyrian (nor modern) term. Both *ahāzu* and *erēbu* patterns would then refer to different matrimonial relationships implying specific rules of ownership of the matrimonial assets.

This conclusion is of course conjectural, since it cannot be checked against other Middle Assyrian tablets. The connection between MAL A §35 and text [2] is also hypothetical: it might be that the law only deals with a widow without children; in such case, the widow does not bring anything from her former husband into the house of the new husband.

¹⁶ The translation of the expression *kī ahuzzete* is problematic. See CAD, *ahūzatu*. Roth 1995:175 translates “into the protection of the household of her fornicator”; Cardascia 1969:249 n. f. translates “en qualité d’épouse” but notes that the lawgiver does not use the usual *kī aššati*, restricted to the woman who enters marriage as a virgin.

3.3. Conclusion

The Middle Assyrian documentation on inheritance law of daughters and wives does not testify to the practice of giving a wife or daughter the status of “father-and-mother” or “man-and-woman” found in Old Assyrian Assur, Emar, Nuzi and Munbāqa.¹⁷ It might be accidental, or without substantive effects: the marital gift, acting as a life interest for the widow, would achieve the same effect as compulsory indivision obtained with the “father-and-mother” institution. The sources are too scanty to decide the matter.

4. Inheritance through Women

Text [2] and several paragraphs of MAL and deal with the subject.

4.1 Inheritance of *dumāqu*-jewels

Those items assigned (but not given) by the husband, remain his property. He takes them back upon divorce (MAL A §38); if he dies, the *dumāqu* belong to his sons (MAL A §26) or to his undivided brothers (MAL A §25). *A contrario*, if the brothers had already divided the shares before the death of the husband, they no longer have any claim to these items. Thus MAL (A §26 *in fine*) states that, in the absence of sons and (implied case) if the brothers are not undivided, the widow keeps the jewels. They are supposed to be part of the share of the deceased, and given as a gift to the wife.

The widow in MAL A §25 gives back the *dumāqu* “that are not missing.” For those items missing (“the rest”), divination is used probably to decide whether they have been lost or hidden by the woman. This procedure is needed because the wife used to live in her father’s house: given the general rule concerning ownership of moveable property, the brothers have to contest the presumption in favor of the widow (or her father). If they claim other items as the missing *dumāqu*, they have to establish their rights to them.

4.2 Inheritance of the Dowry (MAL A §29)

The law considers a “second marriage”: the woman “enters” the house of her husband, which means that, according to MAL A §35, there should be a transfer of all her goods into the hands of the man. As an exception, dictated by the very nature of the dowry, the law states that the dowry belongs to the children of the woman and cannot be claimed by in-laws. The combination *munus* (“woman”) + *erēbu* (“to enter”) shows that the law deals here with the proprietary aspects of a relationship involving two people, or at least one (the man) formerly married. The last statement (l. 19) shows that the husband had sons from a previous marriage.

The end of the text (ll. 18-19) is not clear because of the obscure meaning of verb *puāgu*. We follow here the translation of Postgate.¹⁸ In any case, the clause demonstrates that the dowry can be transferred from the family of the woman to that of the husband, for a reason which we cannot understand.

4.3 Inheritance of the Paternal Estate through the Mother (MAL A §46; [2])

Inheritance of the paternal estate is the prerogative of the legitimate children of the deceased; natural sons inherit from their father only if there are no legitimate sons (§ 41).

It is now well known that inheritance rights of the offspring are related to a duty to support the surviving mother.¹⁹ This duty is expressly stated in MAL A §46, though the text does not connect it with inheritance. Is this condition implied in text [2], for the transfer of the marital gift to the son of the deceased? If so, the will would not state this duty, because it depends on the general rules of inheritance. But MAL A §46 considers maintenance of the

¹⁷ For a legal interpretation of these expressions, see Westbrook 2001, with reference to the Nuzi and Emar material. Add now Michel 2000 for an OA example, and Mayer 2001 for Munbāqa.

¹⁸ Postgate 1971:388, following AHW *puāgu(m)*.

¹⁹ See most recently Stol & Vleeming 1998.

widow only when the husband did not assign her a marital gift from his own estate; the son of text [2] could then escape the duty to care for his mother.

The fact that the widow lives with one of her sons does not relieve the others of the duty of supporting the mother (§46 ll. 96-98). The secondary wife has to work for her sons, which means that she has to share in the daily expenses. In a Munbāqa text,²⁰ unfortunately in a broken context, the wife has to do the service (*šipru*) for her daughter, and conversely. The service of the daughter might be explained by the fact that, as a girl, she has no economic means to support her mother. She participates in the care of her mother through her work. But basically, there is here, as in MAL A §46, an idea of reciprocity based on some kind of contractual agreement (which is expressly stated for the main wife in MAL A §46 ll. 96-98).

5. Inheritance of Women: Rights of the Offspring to the Wife of the Father (MAL A §43)

This is a limited but interesting case, occurring in MAL in connection with the law of levirate. It is a common custom in the Ancient Near Eastern family, especially documented for royal wives, that the sons may inherit the woman (or women) of their father, except their mother.

MAL A §43 considers the case of a man (X) who takes a daughter-in-law for one of his sons (A) who dies. X may give her in marriage to another nubile son (B). If X dies and the son (A or B) dies too, leaving a nubile son (C), the latter may marry the woman. The brothers of A or B have no more rights because of the division of the estate after the death of X; the right of A or B to acquire the woman (in order to marry her) is transmitted to C through inheritance law. It means that a wife might be considered as part of an estate.

Conclusions

The picture that emerges from this brief survey of the sources is twofold: a woman can own goods, and act as a person in the juridical sense of the word; but she is sometimes also considered as an object, just like other property (for instance slaves).

The difference between these two opposite views of women lies in the fact that, in the first case, she is a mother, whereas in the second case, she is still a girl. Motherhood certainly had social implications resulting in a higher position inside the family of the husband. But above all, giving birth to offspring allows the transmission of family property; the rights of the wife to the property given by her father or her husband are transitory since it will pass to her children. As long as she is childless, she can be carried over from one man to another, usually within the same family, as a potential means of reproduction. Ownership is then closely connected with actual or future motherhood, which justifies bequest of property and its mandatory devolution to her progeny.

Abbreviations

AHw Akkadisches Handwörterbuch

ARM Archives Royales de Mari

CAD Chicago Assyrian Dictionary

KAJ Keilschrifttexte aus Assur juristischen Inhalts (E. Ebeling). Wissenschaftliche Veröffentlichung der Deutschen Orient-Gesellschaft 50, Leipzig, 1926.

KAV Keilschrifttexte aus Assur verschiedenen Inhalts (O. Schroeder). Wissenschaftliche Veröffentlichung der Deutschen Orient-Gesellschaft 35, Leipzig, 1920.

LH Laws of Hammurabi

MAL Middle Assyrian Laws

²⁰ Mayer 2001 n° 92.

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