ABSTRACT

LEGALLY BOUND: A STUDY OF WOMEN'S LEGAL STATUS IN THE ANCIENT NEAR EAST

by Beth Troy

This paper analyzes the legal status of women in the ancient Near Eastern law codes and legal documents of Ur III, Old Babylonia, and Middle Assyria. From these laws, one can determine how ancient Near Eastern society perceived women. By studying women’s legal status, one can also determine the values and societal structure of ancient Near Eastern societies.
Legally Bound:  
A Study of Women’s Legal Status in the Ancient Near East

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For Matt
The best two-for-one deal a girl could ask for.
Introduction

Hatala watched her father and father-in-law sign, date, and seal the marriage contract. The law required neither her opinions nor her authorization to legalize a marriage contract. Hatala did not think twice about this circumstance because the contract did not diverge from the other marital contracts she had previously witnessed in her family.

The marital stipulations appeared standard in comparison to other marital contracts she had heard about. If Hatala’s husband, Laqipum, traveled to another city frequently for business, then he could marry a woman in that city. Although Hatala could not recall many instances of a man with several wives, she did know quite a few men whose economy supported two wives. The contract also stipulated that if Hatala could not provide children after two years, she must provide Laqipum with another woman who would do so. She understood the importance of this measure as a need to continue the family line. Without children, who would take care of her and Laqipum in old age? Without children, who would work the family industry? It did not matter that the children “belonged” to another woman as long as they existed.

Witnesses in both families read the contract closely, nodding in agreement with its contents. The fathers looked pleased for their part in increasing both of the families’ prestige and wealth through this union. Laqipum is a reliable man, obedient to his family, Hatala thought. I am a reliable woman, obedient to my family. This will be a fruitful match.1

The above summary of an Old Assyrian marriage contract reflects a woman’s marital position within the ancient Near Eastern world. A young woman, and sometimes her fiancé, had little or no say in the betrothal process. In a society where harsh weather, invading armies, and disease created short life expectancies, marriages of love and happiness were a premium that most families could not afford. A woman’s security in a marriage balanced upon her ability to produce an heir. If she could not bear children, then she was either required to provide her husband with a concubine, as demonstrated in Hatala’s marital contract, or suffer divorce, as demonstrated in the Hammurabi law code.2 Hatala’s contract is merely one of many legal examples by which ancient Near Eastern society created stipulations against women’s autonomy. From a feminist view, Hatala’s contract smacks of the female subordination common to all patriarchal societies. But this modern conclusion does not answer why ancient Near Eastern societies created such laws or what affect the laws had on ancient Near Eastern society.

Ancient Near Eastern law spanned the public and private spheres, and tended to regulate women as counterparts to male relatives instead of as independent persons. In a turbulent world where a society’s grip on its inhabitants was tentative at best, the regulation of the family unit was a state concern. Consequently, the preservation of family frequently took priority over the individual desires of its members. In Hatala’s contract, one can see that the desires of the families for a marriage overruled the desires of the two individuals entering into the marriage. While laws held both men and women accountable for the family, women – despite their status as lifelong minors to their fathers, brothers, husbands, and sons – were more often than not the scapegoats for a family’s failure. Hatala’s contract shows that infertility was the wife’s problem, not the husband’s. If Hatala did not produce children within a two-year period, the law required

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1 Summary based on the “Marriage Contract, Old Assyrian” The Ancient Near East: Supplementary Texts and Pictures Relating to the Old Testament (ANESTP), ed. James B. Pritchard (Princeton: Princeton University Press, 1969) 543: This contract reflects an unusual circumstance in which a man’s business took him away for the greater part of the year. In this circumstance, he could marry a woman in the other city.

her and not Laqipum to provide another means of having children. The contract sanctions Laqipum’s ability to marry another woman, yet makes no mention of Hatala’s legal rights to marry another man.

It would be easy to label women’s legal status in Sumer, Babylonia, and Assyria as “oppressive” and toss it in the pile of other historical tales detailing female subordination. But simplistic conclusions yield simplistic results, and an historian can glean a significant amount of information about women in ancient Near Eastern society if the historian approaches the data from a different angle. Gender history is not a way to merely include women in the historical record, but instead is a discipline that “will provide new perspectives on old questions, redefine the old questions in new terms, make women visible as active participants…[and] leave open possibilities for thinking about current feminist political strategies and the future…”

By this definition, studying women in the their historical context is not a byproduct of studying history, but a way to study history. By asking an “old question” about whether the ancient Near Eastern legal system intended to subjugate women, one can learn a significant amount of information about ancient Near Eastern values and societal structure.

Research and archaeology of the last century have unearthed significant results regarding female roles in the ancient world. Some evidence reveals surprising tidbits of autonomy, while other evidence reflects the patriarchal status quo. This thesis compares women’s legal status under different cultural regimes of the ancient Near East to gain a better understanding of women’s placement within these societies. It is arranged topically to analyze female status under the laws and legal documents from the three dominant cultural periods of the time – Ur III (2112-2004 B.C.), the Old Babylonia (1792-1750 B.C.), and Middle Assyria (1114-1076 B.C.).


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5 *Women’s Earliest Records: From Ancient Egypt and Western Asia*, ed. Barbara S. Lesko (Atlanta: Scholars Press, 1989) xiv – “While often assumed to be patriarchal due to the influences of the Old Testament, the societies of the ancient Near East reveal varied and surprising examples of women’s status and participation in public life and economy.”
Chapter One: The Ancient Near Eastern World

Introduction

The law codes analyzed in this paper were chosen because they represent the three dominant cultures in the ancient Near East from 2000 to 1000 B.C. Before one can study the consequences of law, one must first study the context in which the law was written. Consequently, this chapter offers historical context for early Sumerian society, Ur III (a later Sumerian society), Old Babylonia, and Middle Assyria.

Early Sumer

In his examination of ancient law and society, Russ Versteeg concludes: “Women seem to have enjoyed more autonomy and social status when Sumerian city-states were in their earliest stages of development than in some subsequent periods.” 7 Karen Rhea Nemet-Nejat supports Versteeg’s claim, and attributes female autonomy to the prominence of goddesses in early Sumerian religion. 8 Although ancient Near Eastern religions remained polytheistic until the founding of Judaism, goddesses in early Sumerian culture maintained a higher stature in earlier centuries than in subsequent centuries. According to Nemet-Nejat, a population’s devout worship of female deities could translate into a population’s respect of women. Indeed, in early Sumer, women owned land and dominated certain industries.

Ilse Seibert agrees with Nemet-Nejat’s theory, arguing that Ninhursag’s importance as a goddess in early Sumerian creation myths resulted in “the great esteem that woman was held as the bearer of life, the mother of the family, the head of the tribe, the priestess.” 9 Although a lingering emphasis on fertility continued throughout progressive millenniums, the high value associated with female reproduction diminished. Nemet-Nejat again attributes the ideology to deities. As Mesopotamian society evolved, “the gods reflected a society in which men were predominant” 10 and consequently women’s roles diminished. In later centuries, fertility would translate into a woman’s position as first-ranking wife instead of a highly valued member of society. A woman’s infertility could result in divorce or demotion to second-ranking wife.

Marc Van De Mieroop’s research also shows women as active and valued members of the ancient Sumerian economy, especially in regards to textile industries and agriculture. Unlike Nemet-Nejat, Van De Mieroop remains uncertain as to “how far these indications about women in the economy reflect the social attitudes toward them. The economic systems in which the women function may be entirely controlled by the men and the women mentioned...may have been very unusual.” 11 How can scholars be certain that Sumer’s textile industry differs from today’s female-dominated educational profession in which women compose the majority of its workers, but men constitute the majority of administrators? Data revealing women’s presence in ancient industry does not mean autonomy. Without knowing the reasons behind why women entered an industry or the conditions they faced working in an industry, one cannot assume that their status as workers gave themmore choices than their status as daughters, wives, and mothers.

10 Nemet-Nejat, 122.
Although archaeologists have unearthed considerably more evidence from Sumer than from other earlier cultures, much about women’s placement within Sumer’s societal structure remains uncertain. The existence of fertility cults attests to women’s value as mothers, but how this value translated into other societal institutions remains unclear.

**Ur III**

With Ur III, scholars have the first relatively complete collection of laws. Although the prologue of the Ur III law collection mentions Ur-Namma, the founder of the Ur III dynasty, as its compiler, certain historical events listed in the prologue occurred during his son’s, Shulgi’s, reign. Consequently, modern scholars attribute the laws to both. Walter R. Bodine states that the Ur III dynasty “was a period of Sumerian Renaissance” in which “a highly organized bureaucracy made for a tight and effective administration that produced prosperity and security through a good two-thirds of the century-long reign of the dynasty.” The time and manpower necessary to compile and promote a body of law are a luxury that usually only stable societies can afford, and the Ur III laws are a good example of a byproduct of a peaceful societal period.

Lawmakers of Ur III compiled the laws between 2112-2047 B.C. Sumerologists created modern translations of the laws from sets of incomplete tablets found at Nippur and Ur, dated three hundred years after the originals. Although the Ur III laws are some of the oldest laws in existence, earlier civilizations also instituted reforms to regulate their inhabitants’ professional and personal activities. Whether Ur-Namma and Shulgi diverged, built upon, or both diverged and built upon their predecessors’ laws will be discussed later in Chapter Two.

In the prologue of the Ur III laws, Ur-Namma and Shulgi justified their right to create and enforce law through their divine right to rule; a gift bestowed upon them from Nanna, the goddess of justice and truth. They also listed their military and civic accomplishments from uniting the lands of Sumer and Akkad, to protecting the interests of the downtrodden: “I did not deliver the orphan to the rich. I did not deliver the widow to the mighty.” Such attested good stewardship of divine favor reinforced their right to rule, and in theory, rendered the laws perfect. If indeed Ur-Namma and Shulgi ruled by divine right, their method of rule would either gain favor or earn disapproval with the goddess Nanna. The wording of the prologue implies that the laws were first offered to Nanna for her approval, and only after she granted her favor, would the rulers implement the laws into the society. Consequently, kings did not enforce laws for their pleasure but for the gods’ and goddesses’ pleasure. The very layout of a Sumerian city attests to the importance of gods in Mesopotamian culture. All roads led to the temple area, and temple itself, known as a ziggurat, “more than anything else, can be said to symbolize ancient Sumeria.” In addition to the public temples, people also constructed household shrines to summon favorable intervention from Sumer’s pantheon of deities for childbirth, marriage, and

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14 Ibid.
15 Arnold and Beyer, 104.
economic prosperity. Consequently, it is not surprising that kings needed to invoke favor from the gods and goddesses for administration and legislation.

When researching how law affects society, Versteeg argues: “better than a mere recitation of their laws is to ask what values the laws promote and what interests they protect.” With the case of the Ur III collection, the 40 provisions undoubtedly served the interests of men over women by creating guidelines by which men could retain a patriarchal family structure and male dignity, often at the expense of females. The Sumerian provisions focused on civil matters as much as they did on personal matters because it was “characteristic of the rulers of the Ancient East to try to ‘regulate’ all relationships in the family as well as in society,” and the capacities that women maintained were predominantly familial as daughters, wives, and widows. Ancient societies’ need to regulate family affairs reflects the importance of the family unit to the state.

**Babylonia**

A better examination of how law reflects ancient Near Eastern society is found in Old Babylonia with Hammurabi, the sixth ruler of Babylonia’s first dynasty (1792-1750 B.C.). Hammurabi and his lawmakers compiled “the longest and best organized of the law collections from Mesopotamia.” Most likely, Hammurabi’s laws are a collection of common laws that existed for centuries but for various reasons, had never been codified and written down in one document. Unlike his Sumerian predecessors, Hammurabi was an Amorite. Amorites were an ancient Near Eastern nomadic group from the desert who infiltrated the area of Babylonia and established a firm rule in the early 18th century B.C. Like Ur-Namma and Shulgi, political stability served as a prominent factor in the development of the Hammurabi Laws. During his reign, Hammurabi united a vast expanse of land extending from the southern Sumerian states to the northern Akkadian kingdoms signaling “a unified empire on Mesopotamian soil…a centralized government, the existence of which is demonstrated by ample sources, could only function under a uniform law.” Laws were merely one method Hammurabi wielded to control of his sizable empire.

In Babylonia, the king controlled the justice system. The ancient Near East’s legal system contained two types of courts: ecclesiastical, where priests served as judges, and civil, where secular legal experts served as judges. In both cases, the king appointed the judges. Although the king did not regulate daily appeals, he was in theory the “ultimate appeal” of the land. Thus, if a judge remained undecided about the outcome of a case at the local level, he could transfer the case to the “federal” level, much like the current United States’ justice system. “It was an axiom of royal prudence that if a king paid no heed to justice, his subjects would rebel and his kingdom be laid waste, his destiny reversed and misfortune follow close upon him.”

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19 Versteeg, 22.
20 Versteeg, 22.
21 Seibert, 9.
22 Roth, 71.
24 Fairservis, 86.
This statement alludes to the continued importance of ruling by divine right. Ungoverned bands of people could easily turn into anarchy, but only gods could reverse a king’s “destiny.” In light of this potential omen, it is not surprising that Hammurabi chose to “establish justice” as early as his second year.

Archaeologists discovered the most complete artifact of Hammurabi’s edicts in the early 20th century on a black stele at the ancient Elamite capitol of Susa. The stele contains an extensive prologue and epilogue as well as about 300 provisions. The prologue, like that of Ur-Namma and Shulgi’s, establishes Hammurabi as the recipient of divine favor. According to the prologue, he used this power to:

> Make justice prevail in the land, to abolish the wicked and the evil, to prevent the strong from oppressing the weak, to rise like the sun-god Shamash over all humankind, to illuminate the land.

The image of Hammurabi communicating these laws with the sun-god Shamash covers one-third of the seven-foot-tall stele. This image, like the prologue, emphasizes the divine justice of the laws inscribed. When Babylonians obeyed the gods they honored Shamash as much as they honored Hammurabi. When Babylonians broke the laws, they sinned against Shamash as much as the state, and punishment from the government was the least of their worries. According to the prologue, Hammurabi created the laws to “ensure their permanence by the divine sanction of blessing for their observance and curses for their neglect.” Centuries after its compilation, societies continued to copy Hammurabi’s laws.

Hammurabi’s code offers a clearer picture of women’s status in ancient Mesopotamia than the Ur III provisions because it defines women as priestesses, recipients of inheritance, victims of physical assault, and workers as well as daughters, wives, and widows. Just as the law placed men in a distinct hierarchy beginning with priests at the top and ending with slaves at the bottom, so too did it separate women into distinct, unequal classes. The law did not promote equality between the sexes. Men enjoyed a considerably larger amount of autonomy than women.

**Assyria**

Assyrian lawmakers compiled laws under Tiglath-pileser I (1114-1076 B.C.). As in the case of Ur III and Old Babylonia, the laws of Middle Assyria are a byproduct of a powerful empire. Under Tiglath-pileser I the “Middle Assyrian era attained its full flower,” when he united Southern Mesopotamia and Northern Anatolia under his name. Indeed, Tiglath-pileser I was such a mighty ruler that later rulers took on his throne name in the hope they would emulate his success. Unlike the relatively complete inscription of Hammurabi’s laws, archaeologists have yet to find a single compilation of Assyrian laws. The collection scholars traditionally label as the Middle Assyrian Laws is actually a series of cuneiform tablets labeled from A to O. The

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29 “Hammurabi,” prologue.
30 Versteeg, 31.
31 “Hammurabi,” prologue.
32 Roth, 73. The actual interpretation varies among scholars, some of whom argue that Shamash is dictating the laws to Hammurabi while others contend he is offering the laws to the god.
33 Driver and Miles, “Babylonian Laws,” 41.
34 Roth, 74.
35 Ibid., 95.
38 Roth, 153.
Tablets as a whole reveal the Assyrian government’s regulation of civil concerns ranging from inheritance to murder. Tablet A, however, deals solely with women “as victims or principals” of crimes, and thus serves as the only reference for Middle Assyrian laws in this paper.\textsuperscript{39}

Tablet A is a copy dated three-hundred years later than the original, and unlike the Ur III and Old Babylonian laws, does not contain a prologue and epilogue establishing the ruler’s divine ordination and supremacy over his territory. Some of the laws of Tablet A are consistent with Babylonian and Sumerian law, but some of the laws reveal a completely new degree of punishment. Tablet A “reveals a harsher and cruder aspect which crops out more particularly in the frequency of punishments that stand in no logical association with the crime but are either intended to humiliate an offender or to inflict bodily torment.”\textsuperscript{40} The 60 laws in Tablet A “contain some of the most stringent regulations ever seen in the Ancient Near East restricting the movements and contacts of at least highborn women.”\textsuperscript{41}

William C. Gwaltney attributes the severity of Middle Assyrian laws to the unpredictable pantheon of gods that controlled the Assyrian realm. In Ur III and Old Babylonia, peoples’ good deeds resulted in divine favor; their bad deeds resulted in divine wrath. In contrast, Middle Assyrian gods were more fickle than just. According to Gwaltney, this theological concept led to a societal-wide “pervasive pessimism that the gods’ decisions were arbitrary and amoral. Humans had no destiny beyond an afterlife in dust and gloom. The Assyrians learned from their gods that military power outweighed moral force. Even their laws were harsher.”\textsuperscript{42} Gwaltney raises a provocative hypothesis. Under such a regime of spiteful deities, why would anyone attempt patience, optimism and forgiveness?

Walter A. Fairservis also notes the severity of Middle Assyrian culture. Unlike Gwaltney, however, Fairservis argues that Assyrian severity derived from its geography instead of its theology. Located north of fertile Mesopotamia, Assyria had few natural defenses and consequently served as a battleground against nomadic desert tribes.\textsuperscript{43} The Assyrian’s “powerful and ruthless” army included not only professional soldiers, but also peasants who could wield tools of agriculture and warfare with equal skill.\textsuperscript{44} “Fear was a weapon well understood by the Assyrians and used by them as effectively as bows and spears. Their treatment of defeated enemies was as ruthless and terrible as any in history.”\textsuperscript{45} “The Vassal-Treaties of Esarhaddon,” made between Esarhaddon, King of Assyria and Ramataya, city-ruler of Urakazabanu, reflect the unbending vigilance and sheer harshness the Assyrian kingdom imposed on its enemies. The second half of the treaty details the divine punishments Assyrian gods would inflict on Ramataya if he chose to not abide by the treaty. These curses included infertility, locusts and dangerous encounters with a man-eating lion.\textsuperscript{46} Included as well is this statement of ill wishes: “May Ninurta, leader of the gods, fell you with his fierce arrow, and fill the plain with your corpses,

\textsuperscript{39} Ibid.
\textsuperscript{42} Gwaltney, 103-104.
\textsuperscript{43} Fairservis, 94.
\textsuperscript{44} Ibid., 95.
\textsuperscript{45} Ibid., 96.
\textsuperscript{47} Ibid., stipulation 47.
\textsuperscript{48} Ibid., stipulation 54.
give your flesh to eagles and vultures to feed upon.”

Harsh treatment was not limited to the battlefield either. Like the Babylonian kings, the Assyrian kings (who led armies into battle) also served as “the first judge in the land and could be appealed to as a last resort.”

Why would their societal laws be any less stringent than their military negotiations?

Most likely, both Gwaltney’s and Fairservis’ theories hold weight. Assyria’s severe gods could merely be a reflection of the harsh society in which Assyrians lived. Harsh Assyrian gods could also play on the psyche of their faithful adherents. Either way, severity existed and in an era of constant warfare, rulers had little patience for civil disobedience at any level. The laws mirror the harshness of the war treaties and widen scholars’ panoramic image of women in the ancient Near East. In earlier codes women were legally recognized as wives, daughters, and proprietors. In the Middle Assyrian laws they are also legally categorized as thieves, witches, deserters, and perpetrators of physical abuse.

Conclusion

Although complete artifacts of the Ur III, Old Babylonian, and Middle Assyrian law collections do not exist, historians can glean a significant amount of information about the societies in which they were created.

With the laws of Ur III, historians have the most complete form of laws composed by one of the first, prominent sedentary societies. Through these laws, one can discern the importance of gods in Sumerian culture. According to Sumerian theology, gods appointed the kings and closely monitored their actions to ensure that earthly rule aligned with divine requests. The number of ziggurats and household shrines attests to the Sumerians’ devout belief.

With Hammurabi’s laws, historians have the first thorough law collection of the ancient world. A number of the laws mimic the values of Ur III, leading historians to deduce that justice in the Old Babylonian period was both an extension and expansion of Ur III justice. Unlike the Ur III laws, Hammurabi’s collection gained more widespread recognition in the ancient Near East.

Table A gives “women an even more prominent place” than seen in Ur III and Old Babylonian laws. The laws are more specific and harsher than their predecessors and reflect a greater change in society than is seen in the transition from Ur III to Old Babylonia.

From early Sumer to Middle Assyria, women’s legal status changes. Since laws are a byproduct of society, women’s changing roles reflects a change in how ancient Near Eastern society valued women. Sumer exalted women’s fertility through prominent female goddesses; Ur III law only mentions women in relation to their male family members; Old Babylonian law offers women more autonomy as priestesses and workers; Middle Assyria punishes women as criminals. In this way, one can begin to see how studying women’s legal status reveals information about the societies in which the laws were created.

49 Ibid., stipulation 41.
50 Fairservis, 99.
51 Elizabeth Mary MacDonald, The Position of Women as Reflected in Semitic Codes of Law (Toronto: University of Toronto Press, 1931) 33.
Chapter Two: The Historiography of Ancient Near Eastern Law

Introduction

Factors of doubt, subjectivity, and fragmentary evidence define history as a discipline of “million dollar questions.” Can historians logically ascertain the ideals, customs, and daily lives of ancient peoples from the evidence they left behind? The further back in time historians reach, the more tenuous the hypotheses become, and when a historian confronts the “cradle of civilization” it is every historian’s ball game, so to speak. The languages are dead and the number of linguists who have the patience and expertise to translate the tens of thousands of unpublished tablets number only a handful. Every historian operates under the reality that his/her one piece of evidence (for it is rare that two or more might be found on any given topic) might be contradicted in a year or two as more texts are translated and published. Consequently, the field is plagued by caution and restraint: a situation most prevalent when reviewing the historiography of ancient Near Eastern law.

Archaeology during the last century has revealed a number of findings. In the early part of the 20th century the United States, Britain, France, and Germany funded multiple expeditions to the Middle East to uncover the precedents of Western Heritage and hopefully, bring back glittering booty to fill national and university museums. A byproduct of their efforts was the discovery of several collections of law, including the laws of Ur-Namma and Shulgi, the laws of Hammurabi, and the Middle Assyrian laws. The law collections’ sheer size, in relation to the smaller pieces of evidence from the area, render them a rich resource for historical study. Over the past century, a number of prominent legal historians developed firm stances regarding the purpose for which ancient Near Eastern societies created the law collections. Although scholars know law existed in the ancient Near East, many remain uncertain as to the exact purpose of the legal artifacts unearthed during the last century. Yes, they are stated legal tablets. Yes, they read like laws. But do the law collections from Ur III, Old Babylonia, and Middle Assyria represent the only laws instituted by ancient Near Eastern rulers?

The answer to this question has been a constant arena of debate among linguists, historians, and legal scholars of the ancient Near East. On one side, there are scholars who theorize that ancient Near Eastern legal artifacts represent true law. On the other side, there are scholars who theorize that ancient Near Eastern legal artifacts represent only legal ideals. Such theoretical questions must be addressed within this paper before questions of how law affected ancient Near Eastern women can be explored.

Early Legal Historiography

The most logical place to begin a legal historiography is with the founder of modern historical jurisprudence: Sir Henry Maine. Unfortunately, Maine’s influence on the historiography of law took place about half a century before archaeologists discovered Hammurabi’s stele in 1901. Fortunately, his academic contribution to legal theory, which he directly applied to medieval Indo-European legal systems, is relevant to the study of ancient Near Eastern law.

Maine stood firm in his thesis: Concepts behind the creation of ancient law bear close resemblance to concepts behind the creation of modern law. It is merely the societal conditions to which government’s apply law that have changed. “The haste or the prejudice which has generally refused [ancient law] all but the most superficial examination must bear the blame of the unsatisfactory condition in which we find the science of jurisprudence.”

Although Maine

specifically referred to the more exhaustive ancient Greek and Roman law codes in the above quote, his critique of historical jurisprudence bears weight for scholars who dismiss ancient Near Eastern legislation first because of the laws’ fragmentary nature, and second because of the laws’ “ruthless” (i.e. eye-for-an-eye) policies. The societies for which rulers created ancient law necessitated a different kind of law, and until historians understand the nature of ancient Near Eastern society, they can never understand the nature and purpose of ancient Near Eastern law.

To substantiate his theory, Maine hypothesized that law originated from the people, not the kings who controlled the people. Society did not begin as a monarchy or tyranny, but as a sort of commonwealth in which nomadic bands of people struggled together to survive. It was only after society’s transition from a pastoral to a sedentary formation that rulers over large masses of territory existed. For a scholar to understand how law evolved during a transition, he/she must strip away the traditional concept that laws are commands created from the top and enforced down. According to Maine, kings did not create ancient law; a society’s patterns or habits created ancient law. The ancient world originally operated under an ever-shifting common law about which people were aware and to which people adhered. The laws that society’s retained within this common and unwritten form were the laws that had been proven to work.

If one agrees with Maine’s theory, then one could also assert that the recording and compilation of oral law into written collections does not signal a progressive step in the formation of law. It instead signals a progressive step in the preservation of law. “Inscribed tablets were seen to be a better depository of law, and a better security for its accurate preservation, than the memory of a number of persons however strengthened by habitual exercise.” If indeed the initial written laws contained only laws hitherto followed by a society, than Maine’s theory partly explains the fragmentary nature of the ancient Near Eastern laws. How could Hammurabi expound upon murder without mentioning the murder of babies and small children? Some scholars argue that because Hammurabi did not exhaustively discuss every possible situation to which murder could apply, this renders the Old Babylonian laws a summary “collection” instead of a detailed “code.” Since a “collection” is not exhaustive, it therefore could not have been the only source of law for Mesopotamian society. Maine, however, views the “gaps” of ancient law as “common sense.” According to Maine, ancient peoples understood that the principles of one case study applied to another, regardless of whether certain conditions changed. Rules of cleanliness, purification, and elementary kindness could transmit from one law to another without the laws themselves having to state every instance for which particular circumstances applied. If murdering one’s father resulted in punishment, than one could assume that murdering one’s child also resulted in punishment. People did not need laws for both to understand the ramifications of murder. For Maine, gaps in the record exist not as a result of lazy lawmakers, but as a measure against superfluity.

With Ancient Law, Maine spawned a new discipline that Lawrence Krader labels “historical jurisprudence.” According to Krader, Maine attempted to understand historical law on its own terms by researching its origins and social applications within ancient and medieval civilizations. Maine opposed the concept that “law is a self-contained system which proceeds

53 Ibid., 5
54 Ibid., 9
55 Ibid., 11.
analytically and independently of the society around it.” Instead he asserted that law was a product of its society, and thus cannot be studied apart from the society in which it was created.\footnote{57}{Ibid.}

In *Ancient Law and Modern Understanding: At the Edges*, scholar Alan Watson also asserted the importance of legal studies as a way to gain historical understanding of how societies operated. Like Maine, Watson did not research Mesopotamian laws in his analysis, but he repeatedly stated throughout his work that understanding ancient law is essential to understanding the ideological and practical meaning of modern law. This hypothesis readily applies itself to ancient Near Eastern edicts.

In his introduction, Watson argued that “the impact of ancient law is with us today,” and despite the fragmentary evidence and linguistic challenges it poses, historians need “to take law seriously.”\footnote{58}{Alan Watson, *Ancient Law and Modern Understanding: At the Edges* (Athens: University of Georgia Press, 1998) xiii.} One cannot claim to study social, religious, gender, or political history if one fails to consult a society’s laws throughout his/her research. According to Watson, the nature of legal history is interdisciplinary, and useful for any facet of history, but scholars who analyze ancient law must do so with a keen eye for detail, legal jargon, and implicit undertones. There are many ways to misinterpret ancient laws and Watson carefully detailed the pitfalls scholars should avoid. First, scholars should respect the ancient law they study and not judge the ancient law by modern definitions of what law should entail. Second, scholars should study primary legal documents if possible. If a scholar does not read the ancient language, than he/she should exercise care in obtaining a translation from a reputable linguist.\footnote{59}{Ibid., 3.} Third, scholars should study laws comparatively; instead of in isolation from one another.\footnote{60}{Ibid., 10.} A scholar gains a better understanding of an ancient law collection if he/she compares it to its legal predecessors and successors. Finally, scholars should carefully read ancient laws for what they explicitly and implicitly regulate.\footnote{61}{Ibid., 33.} For Watson, many “gaps” in the ancient law signify what ancient societies did not value, not what they forgot to regulate.

Watson’s guidelines for studying ancient law stress the approach he exercised when researching legal documents. One might hypothesize that if he had applied his arguments to ancient Near Eastern law, he would have proposed that it was a working form of law despite its gaps and harsh punishments. Watson’s meticulous regard of ancient law lands him firmly in the camp of law essentialists. He states:

Law is a human construct...subordinate lawmakers make law in accordance with what develops to be their cultural norms. They cannot just make up the rules. They need authority, and they usually find it in another system.\footnote{62}{Ibid., 3.}

Consequently, just as American law was founded upon English Common law, and English Common law was a later rendition of Roman law, so too was Assyrian law an expansion of Old Babylonian law, just as Old Babylonian Law was an addendum to Sumerian law. If one agrees with Watson’s chronology of influence, then one may also agree with his theory that law is a conservative product society used to uphold, and not diverge from the status quo. Maine’s influence on Watson’s theory is obvious. By arguing for law as a conservative measure used to uphold “the laws that worked,” Watson further developed Maine’s thesis that written law derived
from an understood common law. Maine’s influence on Watson is also apparent in the gravity with which Watson researched legal history.

Unlike Maine and Watson, scholar A.S. Diamond’s work *The Evolution of Law and Order* clearly placed a negative value judgment on Mesopotamian statutes. His Table of Contents offers clues for his title. Book I is titled “Savagery” and contains a section on “Law Before the Evolution of Courts;” Book II is titled “Barbarism”; Book III “Early Civilization” and Book IV “The Modern Age.” It is quite obvious through Diamond’s word choices that he equated Book IV with progression and Book I with, well, “savagery.” He argued in his preface that *Evolution of Law and Order* contains no theory, but the mere inclusion of the word “evolution” in the title signals the reader that judicial theory is very much present. By labeling the span of historical law as a process of evolution, Diamond was explicitly placing more value on the modern legal system over the ancient legal system. Diamond, a trained Barrister-at-Law, stands on the side of the scholars who view ancient law as both different and inferior to modern law.

Diamond introduced Hammurabi’s laws in Book II. Although he did not define the Babylonian edicts as an exhaustive code, their creation “marks also the beginning of law in the proper sense of the term.” 63 Babylonia was advanced for its time, and unmatched by other contemporary law collections in breadth and depth. Like most scholars, Diamond viewed Hammurabi’s laws as a compilation instead of a creation. He also took his analysis a step further by saying that Old Babylonian law was an improvement upon what had existed hitherto because it consolidated regulations and reconciled contradictory edicts. 64 Although he proclaimed Hammurabi’s laws as “one of the world’s great legal landmarks” the fact that he included it in the book titled “Barbarism” and only deigned to write about it for five pages speaks otherwise. One can deduce that although he believed Hammurabi’s Laws were actual laws he also considered ancient law inferior to modern law. Consequently, Diamond stands in direct opposition to Maine and Watson who argued that ancient law was different, but not sub par.

**Transition to Modern Legal Historiography**

In the mid-nineteenth century, scholars Godfrey Rolles Driver and John C. Miles continued the tradition of the legal scholarship of Maine and Watson. In their two works, *The Babylonian Laws* and *The Assyrian Laws*, Driver and Miles demonstrate their linguistic interest in ancient law. In the preface of *The Assyrian Laws*, Driver and Miles state that the goal of the text was to serve as a detailed linguistic glossary for Assyriologists. To align with their stated purpose, the authors dedicate the bulk of their efforts to translation. In their translation, they sometimes use culture to inform law, but rarely law to inform culture. For example, in regarding inheritances given to wives by their deceased husbands, Driver and Miles offer the translation of the term *nudumnu* (settlement) with all its connotations and denotations. The historical explanation of the term *nudumnu* ends there. 65 They do not take great pains to place the term in a historical context if there was no necessity to do so. If their translation differs markedly from other scholars, then Driver and Miles use sufficient evidence from the culture to substantiate their claims. If Driver and Miles predict that scholars and students might grossly misinterpret certain laws, then they offer context by a means of explanation. Aside from the above exceptions, however, law for the law’s sake takes precedence in their work. Neither Driver nor Miles disagree with Maine’s and Watson’s argument that law influenced ancient and medieval

64 Ibid., 74.
societies, but the focus of their texts remains centered around the definition of the law instead of the implication of the law.

In *The Babylonian Laws* and *The Assyrian Laws* a brief introduction of the laws’ historical context soon moves into the core of the scholars’ research: a detailed, topical description of the laws’ specific content. While Maine and Watson dedicate the bulk of their texts in arguing for the study of ancient law, Driver and Miles’ primarily linguistic translation makes it a bit more complicated to discern their perception of the nature of ancient law.

In *The Babylonian Laws*, the authors note that Hammurabi was neither the first nor the last king to “enforce law and order” within his realm. Although a number of divine myths warned ancient kings to establish justice or pay the forfeit of chaos within their borders, Driver and Miles assert practicality over godly fear as the overriding factor for why ancient societies developed a legal system. The ancient Near East was a turbulent society where a number of uncontrollable factors could take their toll at a moment’s notice. One of the most reliable defenses a society could maintain was a tightly controlled community.

While comparing Babylonian and Assyrian laws, Driver and Miles note the reappearing presence of specific terms and themes. From these findings, the scholars (in agreement with Watson and Maine) conclude that ancient lawmakers built upon “a common customary law throughout the Fertile Crescent” that societies had loosely followed for centuries. Thus, Hammurabi’s “divine inspiration” for creating law was in reality a compilation of existing statutes with addendums. According to Driver and Miles, ancient Near Eastern law had existed for centuries. Hammurabi was merely the first king to promote the widespread recording and dispersion of its statutes.

The fragmentary evidence of ancient law, especially in the case of the Middle Assyrian edicts, makes an analysis of their content, let alone their intent, complicated. Driver and Miles assert that the Middle Assyrian laws were not a code, but instead a combination of standard ancient Near Eastern laws and individual legal cases. This observation led the scholars to hypothesize that their composition was undertaken by a jurist instead of a law-giver. If this were not the case, than why was Assyrian Tablet A, which dealt solely with the legislation of women, created? The breadth and depth of the laws governing women was unlike any other legal document from that time period. And because Tablet A dealt solely with women, it could not possibly have served as the principal code in Middle Assyria. Driver and Miles admit that they do not know the motives behind the creation of Tablet A, but they have no doubt that the edicts were carried out. They conclude that Assyrian Tablet A was a mixture of both Babylonian precedents and Assyrian customs, just as Hammurabi’s laws were a compilation of preexisting Sumerian law and Babylonian customs.

Although the fragmentary nature of the Assyrian laws has left scholars guessing regarding their intent, the relative completeness of Hammurabi’s laws adds an element of certainty to the guessing game of the purpose of ancient law. Driver and Miles assert that the laws contained within Hammurabi’s collection were actual laws, but they also feel that the

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66 Driver and Miles, *Babylonian*, 5.
67 Ibid., 7.
68 Driver and Miles, *Assyrian*, 3.
69 Ibid., 13.
70 Ibid., 14.
71 Ibid.
arguments revolving around the law code’s merit as an exhaustive digest are beside the point. That was never the laws’ stated purpose:

Hammurabi himself makes no claim to have constructed a code of law. He does not class his Laws a “code” or a “digest,” and in the prologue and epilogue he says what his objects were. He was a reformer of law and a legislator and he did not claim to codify or republish the whole existing law in an improved form. His work, then, is not a collection of existing laws with the amendments and adjustments necessitated by their codification; it is a series of amendments and restatements of parts of the law in force when he wrote.  

Historians must not misconstrue Driver and Miles’ assertion for a common law in the ancient Near East as an argument that promotes a stagnation of law for that time. Ancient Near Eastern people maintained administrative techniques that worked, and discarded those that did not. This necessary efficiency stood as a testament to the law’s impact on regulating the city-states of the day. The recurrence of similar laws throughout subsequent centuries and subsequent cultures spoke to the law’s reliability.

**Modern Legal Historiography**

Scholars Martha T. Roth and Russ Versteeg offer a logical transition from the linguistic expertise of Driver and Miles to the tendencies of modern legal historians because their monographs contain both analysis and historiography of ancient Near Eastern law.

Roth’s book, *Law Collections from Mesopotamia and Asia Minor*, is a part of the Society of Biblical Literature’s *Writings from the Ancient World Series*; a compilation created to provide English translations of ancient Near Eastern texts. SBL chooses writers based on their language expertise, and the purpose of *Law Collections* is to provide an accurate translation of ancient Near Eastern law. The majority of the book, from page 13-249, is dedicated to translation. However, Roth briefly contextualizes her linguistic information in the introduction.

Roth does not view ancient law collections as comprehensive, but remains undecided about what this information means. She outlines the multiple viewpoints about the nature of ancient law - beginning with scholars who view the laws as actual laws, transitioning to scholars who view ancient law as purely theoretical, and concluding with scholars who believe law is the best means by which to view societal structure. After researching court cases and legal documents of the ancient Near East, Roth finds that only a small amount of the official data ever referred to law collections to substantiate their decisions. From this information, she hypothesizes that “law collections had little or no impact on the daily operation of legal affairs. However, later in the introduction she qualifies her tentative conclusion with a bit of uncertainty. She asks a series of provocative questions about the nature of law. Who created/compiled ancient law collections? What daily purpose did ancient law serve? In the end, she concludes that questions about the creation, implementation, and purpose of ancient law “are not really answerable and, moreover, miss the intimate connections between law and society.” Scholars can choose to spend their energy on questions of legal theory, but these questions cannot be firmly answered at this time because of the fragmentary evidence. Roth encourages a different approach. The multiple forms of law to which scholars currently have access attest to ancient cultures’ concern for justice. The laws also reflect cultural “assumptions and values.”

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72 Driver and Miles, *Babylonian*, 45.
73 Roth, vii.
74 Ibid., 4.
75 Ibid., 5.
76 Ibid., 7.
77 Ibid.
So why not research what historians know exists instead of running around questions that cannot be answered without the aid of a time machine? In conclusion, Roth validates ancient Near Eastern law for their insights into the values behind ancient Near Eastern social structure.

VerSteeg differs from Roth in that his book, Early Mesopotamian Law, focuses on the culture surrounding law instead of the law itself. VerSteeg deals with the most studied forms of law in his book: Mesopotamian, Egyptian, Athenian and Roman law. He begins every unit (four total) with an overview of the historical background in which the laws were created. The second chapter of every unit details the legal procedures of each system and the final chapter discusses the laws within their cultural contexts. Although VerSteeg does not offer a translation of ancient law like Roth, he presents a firm grasp of ancient law. Questions of who developed the law, the purpose for which it was developed, and how the law affected the overall population are answered in his book.

VerSteeg regards ancient Mesopotamian law with great deference for its impact on historical discourse: “Without doubt, the great law collections (codes) are among the most important sources for any study of Mesopotamian Law.”

He argues that Mesopotamian laws are “collections” instead of “codes” because his definition of a “code” is a set of laws that regulated daily life. He referred to Hammurabi’s epilogue for proof of his hypothesis that the Old Babylonian laws did not regulate daily life. In the epilogue, Hammurabi refers to his laws as “just decisions,” a phrase that leads VerSteeg to conclude that the laws were actually case summaries tried during Hammurabi’s reign as king. In light of this information, “law to be followed” was actually “law that had been followed” and thus had no substantial authority over future legal cases. To further substantiate his argument for the “Hammurabi Laws” vs. the “Hammurabi Court Cases,” VerSteeg cites a handful of scholars who concur that Hammurabi’s laws were past precedents. He concludes his argument with this final statement:

Opinions continue to differ and we may never completely resolve the question of the nature of the Mesopotamian law collections. Nevertheless, given their prominence, it seems wise to treat them as valid sources for studying the law of ancient Mesopotamia.

From this statement, it appears that VerSteeg respects ancient law’s existence more than its content. He places value on ancient Near Eastern law solely because of its sheer abundance in relation to other sources from that time. In this stance, he differs from Roth who respects the laws’ social and cultural merits. VerSteeg also opposes Maine and Watson who feel that ancient law must be respected as law.

**Conclusion**

Although this review of historiography only includes a small amount of prominent legal scholars and historians, further research into other scholars’ theories would not bring one any closer to the answer of the million-dollar question concerning the nature and application of ancient laws.

When reviewing the side the of those who espouse ancient law as working law – Maine, Watson, Driver, and Miles – many aspects ring true. Ancient society, like modern society, needed to regulate its population. So why are the remnants of law we have access to today not the examples of the actual laws of yesterday? They are clear-cut and firm. They were set forth by kings who had the power to ensure justice. They also established many precedents seen in later classical, medieval, and even modern law collections. If one denounces their merit because

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78 VerSteeg, 4.
79 Ibid., 5.
80 Ibid., 6.
they are not exhaustive, then one must also denounce the merit of modern law. For as many laws as it espouses, certain aspects of crimes are still overlooked, or dealt with vaguely in modern law. The modern legal system, like the ancient legal system, in many instances, still leaves judges the power to interpret the law. Perhaps ancient societies did not need an exhaustive code to maintain justice.

Scholars who are skeptical of the laws’ actual application – Diamond, Roth, and VerSteeg – also pose good questions. If the law collections we currently have were indeed “real laws” then why are so many regulations not mentioned? If these laws were indeed “real laws” than why do legal documents from the time rarely, if ever, refer to them? The last argument is especially telling, and supports the stance for those who regard the ancient law collections of Ur III, Old Babylonia, and Middle Assyria as guides instead of actual laws.

Perhaps it is impossible for historians to set aside their modern concepts of what justice should be in order to fairly evaluate what justice meant several millennia ago. Perhaps historians cannot move beyond modern definitions that equate justice with equality and autonomy. Perhaps justice in the modern mind is a comprehensive digest of do’s and dont’s. Since ancient law did not regulate all the aspects of people’s lives, it cannot withstand the scrutiny of modern definitions. Since ancient law was more concerned with promoting order than promoting fairness, it stands directly against the modern concept of choice and individuality.

Until further definitive evidence regarding the intent of ancient Near Eastern law is unearthed, this thesis errs on the side of Maine, Watson, Driver, and Miles in its stance that ancient Near Eastern law was indeed working law for the societies of the time. Like Maine and Watson, one needs to research law from within its cultural context. Ancient societies did not create laws in isolation behind stone facades. The laws were cultural constructs, originally created by the culture, to keep a society at peace. Ancient societies would never have lasted as long as they did without some clear form of regulation. The collections to which scholars currently have access promote the firm control necessary to maintain peace and stability in a developing society. That ancient Near Eastern law is not exhaustive is clear, but Driver and Miles’ argument that Hammurabi never intended for the laws to be exhaustive is provocative. If he never claimed to establish a comprehensive code, than why should modern scholars place that claim upon him? Given that Hammurabi’s edicts number only a few hundred, and the edicts of Ur III and Middle Assyria number much less, it is not illogical to deduce that other laws also existed simultaneously within the three empires. However, the evidence denying the ancient Near Eastern law collections of Ur III, Old Babylonia, and Middle Assyria as moral guides is slim.

For this thesis, the focus of how law reflected ideology takes precedence over how law was enforced. Ancient Near Eastern lawmakers did not arbitrarily create laws privileging one class above another, or privileging one gender above another. They were created with a distinct purpose and the ideologies presented within the laws are pertinent in revealing how Mesopotamian societies perceived women in domestic, occupational, and religious spheres. If the courts used the laws as legislation, then modern scholars know how ancient societies treated women. But even if the laws are eventually proven to have served solely as “cultural ideals,” then historians still learn how ancient society perceived women.

Consequently, a thorough examination of ancient laws is essential in understanding Mesopotamian women as girls subject to their fathers, wives to their husbands, and mothers to their elder sons. This paper uses law as a means of understanding not only women’s placement in ancient society, but why the societies in which they lived originally assigned that value to them.
Chapter Three: Adultery
Introduction

A preserved court case from Nippur reveals the high price a woman could pay if a court suspected her of infidelity. In this case, two men, Nanna-sig and Enlil-ennam, killed another man, Lu-Inanna. Before the assembly at Nippur judged the case, the murderers confessed their crime to Nin-dada, the wife of the victim, who kept their misdeed quiet. Consequently, the court viewed Nin-dada’s silence with great suspicion. If the woman had truly been distraught or shocked over these violent events, surely she would have found some way to notify the authorities that two men, whom she could name, had murdered her husband? Such silence defined her as an accessory to her husband’s murder and the court of Nippur contemplated sentencing her to death for the suspected role she played in the crime. The court did not wish to execute her for suspicion of murder, however. The court wished to execute her for suspicion of adultery:

A woman who does not treasure her husband (i.e. does not tell others about his untimely demise) – she may surely have had intercourse with a stranger, (and) he would then murder her husband. Should he then let her know that her husband had been killed – why should she then not keep silent about him? It is certainly she, who murdered her husband; her guilt exceeds that of the ones who (actually) killed a man.  

Although the defense’s argument eventually saved Nin-dada from execution, the court’s initial perception of Nin-dada speaks volumes about the society’s expectation of female sexual purity. A married woman sleeps with a man who is not her husband. At one point in their affair, the woman’s lover decides to kill her husband. The woman says nothing. Her silence combined with her suspected adultery could have led to her death.

What kind of a world was the ancient Near East that a woman could be killed for suspected infidelity?

Ur III

Lowenstamm argues that harsh punishments for adultery resulted from the ancient Near East’s belief that infidelity led to divine punishment. However, the one adultery law in the Ur III laws demonstrates that the Sumerians must have thought the gods only punished women for adultery. There are no laws in the Ur III collection that regulated men’s extramarital affairs, and the absence of such provisions resulted from the concept that in Ancient Mesopotamia, “adultery was an offence against a husband but not against a wife.” Ur III lawmakers did not hold cheating husbands in suspicion, and they did not consider them immoral. Adultery for men was not a crime.

In the Ur III period, a married woman who initiated an extramarital affair received capital punishment while her lover escaped all penalties. Law 7 reads:

If the wife of a young man, on her own initiative, approaches a man and initiates sexual relations with him, they shall kill that woman; that male shall be released.

According to Ancient Mesopotamian justice, the woman was obviously at fault, whereas the guilt of her lover was more vague. “He commits adultery only inasmuch as he is the

84 Versteeg, 87.
paramour of a married woman: his marital status is not considered of significance.\[^{86}\] Obviously, his actions contributed to the breakup of his lover’s marriage, but since she initiated the affair, the law held her alone accountable.

The law condemning adultery is the only one directly punishable by death for women in the Ur III collection, signifying that female infidelity “must have been a treachery so profound as to constitute an attack not only against everything society stood for, but against what it relied on for its very existence.”\[^{87}\] A woman who committed adultery put the stability of her family at risk, and since the ancient Near East equated the strength of its society with the strength of its familial unit, the law expected women to mirror that peaceful ideal. A faithful woman was stable and predictable, an unfaithful woman was neither.

**Old Babylonia**

Although Hammurabi’s laws number into the hundreds, like Ur III, there is also only one law that mentions adultery. Unlike Ur III, the adultery law of Old Babylonia displays an acute awareness of male accountability. Law 129 reads:

If a man’s wife should be seized lying with another male, they shall bind them and throw them into the water; if the wife’s master allows his wife to live, then the king shall allow his subject to live, then the king shall allow his subject (i.e., the other male) to live.\[^{88}\]

Law 129 reveals that Old Babylonia regarded lovers as an accountable unit. In theory, courts would not grant one lover mercy while simultaneously sentencing the other to death. “Hammurabi’s insistence on treating both adulterers the same has an unusual, but refreshingly modern ring about it; while the other ancient laws seem to assume a temptation that women can resist when men cannot.”\[^{89}\]

Despite the threat of execution for committing adultery, J.J. Finkelstein argues that Old Babylonian society did not view the crime of adultery as seriously as a modern scholar might suppose. In comparison to the other laws within the compilation, he argues that adultery was “at bottom a civil invasion of a husband’s domain, and it was left to him to take as serious or as lenient a view of the matter as he chose.”\[^{90}\] According to Finkelstein, if the Old Babylonian government truly viewed adultery with as much weight as Ur III lawmakers, the government would most certainly have dealt with the matter instead of allowing the woman’s husband a decision in the matter.

Finkelstein’s assumption that the state exacted punishment for only the truly “serious laws” ignores the fact that the state offered execution as a viable punishment for an adulteress. Law 129 placed the wife at the mercy of her husband not because adultery was a petty crime, but because the husband was the victim of her wrongdoings, not the state. In ancient Mesopotamia, victims often had the right to exact specific retributions from their attackers. The eye-for-an-eye policies promoted throughout Hammurabi’s laws was not about sending out the king’s men, but about the victim creating his/her own justice within guidelines specified by the state. If a man cut off the ear of his peer, than the government in turn allowed the victim to cut off the ear of his attacker.

Unlike other eye-for-an-eye crimes, Law 129 appears to let the husband choose a punishment for his wife, placing her at his mercy. In other eye-for-an-eye crimes, the wording


\[^{87}\] Sassoon, 72.

\[^{88}\] “Hammurabi,” Law 129.

\[^{89}\] Sassoon, 116.

places limitations on the revenge that a victim could seek. For example, Old Babylonian Law 197 grants a man the right to break the bone of an attacker who had previously broken his bone. The punishment is specific. It does not allow the victim to break all the bones in the attacker’s body; it does not allow the victim to break all the bones in the attacker’s immediate family. It is a bone for a bone. But what about Law 129? Where are the limitations for what a husband could do to his adulterous wife? Yes, the man could grant his wife forgiveness, but he could also legally execute her, and one could assume, do anything in between.

Unlike the Ur III laws, adultery is less a crime of the state than it is a crime against the woman’s family. Perhaps Old Babylonian society felt stable enough to let family deal with family issues. Perhaps the government viewed adulteresses less as perpetrators of the peace and more as immoral and disrespectful members of society. Although they could still be executed for their unfaithfulness, they could also be granted pardon. The Ur III laws did not grant mercy. The Old Babylonian laws left the decision to the woman’s husband.

Middle Assyria

The seven Assyrian laws regulating the sexual conduct of women “reveal a state of society in which sexual immorality had become sufficiently rampant to necessitate the large number of paragraphs…that deal with various degrees of illicit and unnatural sexual intercourse and the varying circumstances under which it takes place.” The laws of Ur III only punished the woman; the laws of Old Babylonia held both the adulterous woman and her lover accountable for their actions. In Assyria, punishments differed depending upon whether the male lover knew his counterpart was the wife of another man as seen in Law 13 and 14. Law 13 reads:

If the wife of a man should go out of her own house, and go to another man where he resides, and should he fornicate with her knowing that she is the wife of a man, they shall kill the man and the wife.

According to this law, if the woman’s lover knew she was married, the state executed both of them. Unlike the laws of Old Babylonia, the law does not allow the woman’s husband to offer mercy. Law 14 also deals with adultery, but reads differently:

If a man should fornicate with another man’s wife either in an inn or in the main thoroughfare, knowing that she is the wife of a man, they shall treat the fornicator as the man declares he wishes his wife to be treated. If he should fornicate with her without knowing that she is the wife of a man, the fornicator is clear; the man shall prove the charges against his wife and he shall treat her as he wishes.

The first portion of this law mimics Law 13 in that the man knows his lover is married, but instead of engaging in the affair at his home, they engage in the affair in a more common area. The second portion of the law again places the blame for the affair on the wife if her lover claims ignorance of her marital state. The law does not require proof from the male lover to support his claims, but it does require that the woman’s husband prove his claim against her. If his accusations are proven beyond a doubt then the wife of Middle Assyria finds herself in the same position as the adulterous wife of Old Babylonia. Greengus notes that ancient Near Eastern societies allowed husbands several options to punish their adulterous wives with slavery and

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91 Roth, Hammurabi, 121
92 Jastrow, 10.
94 Ibid., Law 14.
death being only two.  How merciful would a husband be if the law did not hold him to such a standard?

The first half of Law 16 introduces yet another degree to adultery:
If a man [should fornicate] with the wife of a man [by] her invitation, there is no punishment for the man; the man [i.e.] husband shall impose whatever punishment he chooses upon his wife.  

Law 16 released male lovers from blame if they knew a woman’s marital status, but slept with her by “her invitation.” As in Law 14, Law 16 does not require proof from the male lover for this initial invitation. The wife is also again convicted to suffer “whatever punishment [her husband] chooses.”

Law 22 presents a unique adulterous circumstance not seen in earlier collections because the affair does not necessarily occur in the town in which the lovers live:
If an unrelated man – neither her father, nor her brother, nor her son – should arrange to have a man’s wife travel with him, then he shall swear an oath to the effect that he did not know that she is the wife of a man and he shall pay 7,200 shekels of lead to the woman’s husband. If [he knows that she is the wife of a man], he shall pay damages and he shall swear, saying, “I did not fornicate with her.” But if the man’s wife should declare, “He did fornicate with me;” since the man has already paid damages to the man (i.e. husband), he shall undergo the divine River Ordeal; there is not binding agreement. If he should refuse to undergo the divine River Ordeal, they shall treat him as the woman’s husband treats his wife.

Law 22 is interesting in that it is told from the male lover’s point of view instead of the female lover’s point of view. The other adultery laws all start off with a similar phrase of “If a man’s wife…., then a man’s wife…” However, this instance begins with “If an unrelated man” demonstrating that he, and not a woman, is the initial perpetrator of the crime. If the unrelated man has another man’s wife journey with him, but swears that he did not know her marital status, he is still required to pay 7,200 shekels. If there is a dispute between the man and his lover about whether intercourse occurred, the man has two options. First, he could undergo the River Ordeal. The River Ordeal, a common element of trial in the ancient justice system, was in reality more severe than a trial because the accused risked his/her life to prove his/her innocence. If the accused was innocent he/she floated, but if guilty, he/she drowned. If the perpetrator in Law 22 chose not to undergo the River Ordeal, he was at his lover’s husband’s mercy. Whatever punishment the man chose for his wife would be the punishment exacted to her lover. The extent to which the husband may punish his wife and lover for their indiscretion is again not alluded to in the text.

Law 23 regulates another circumstance of adultery in which the law could implicate a husband. Law 23 reads:
If a man’s wife should take another man’s wife into her house and give her to a man for purposes of fornication, and the man knows that she is the wife of a man, they shall treat him as one who has fornicated with the wife of another man; and they treat the female procurer just as the woman’s husband treats his fornicating wife. And if the woman’s husband intends to do nothing to his fornicating wife, they shall do nothing to the fornicator or the female procurer; they shall release them. But if the man’s wife does not know [what was intended], and the woman who takes her into her house brings the man in to her by deceit, and he then fornicates with her – if, as soon as she leaves the house, she should declare that she has been the victim of fornication, they

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96 Ibid., Law 16.
97 “Tablet A,” Law 22.
shall release the woman, she is clear; they shall kill the fornicator and the female procurer. But if
the woman should not so declare, the man shall impose whatever punishment on his wife as he
wishes; they shall kill the fornicator and the female procurer.\(^{98}\)

The first condition stated in Law 23 regulates an instance in which a husband, his wife,
and the wife of another man all know that adultery intends to occur. In this case, Law 23 dictates
that the three perpetrators suffer similar punishments as dictated by the unoffending husband.
The second condition stated in Law 23 regulates an instance in which the husband and his wife
know that the adultery is going to occur, but the other wife brought into the affair is ignorant. In
this instance, the woman must immediately declare her victimization upon leaving the couple’s
house. If she does not do this, then the law still allows her husband to punish her in any way he
deems fit. Whether the wife is proven innocent or guilty, the other couple will be killed for their
part.

The nature of these adultery laws warrants a long, second look. Regardless of whether
they regulated a common occurrence in Middle Assyrian society, all of these adultery laws, like
their Sumerian and Babylonian predecessors, served the interests of husbands. In most of the
above cases, a jilted husband is given the power to punish his wife as his outrage dictates. In
Assyria, a culture known for its harshness, death seems like a better option for adulterous wives
when compared to the vague punishment of a husband treating the accused “as he wishes,”
without any mention of legal intervention by the government if his idea of punishment resulted
in inhumane treatment.\(^{99}\) Could he kill her, starve her, enslave her, abandon her? The Assyrian
laws mention no limits, and indeed, their legal sanctioning of brutal treatment in other laws
rendered women “much closer to being chattel than the women of [the Code of Hammurabi].”\(^{100}\)
Although the vague definition of punishment in such laws allowed room for a husband’s choice
to not punish his wife, the high premium held for genealogical purity of descendants rendered
mercy an exception to the rule.

Conclusion

None of the Ur III, Old Babylonian, and Middle Assyrian laws mention any instances in
which a wife holds her husband accountable for fornicating with another woman. However, a
court case from the Kassite Period of Mesopotamia undermines any conceptions modern scholars
might have regarding a husband’s choice to pursue sexual relations with any married woman or
unmarried woman at any time. According to this document, Sin-erimanni, the husband, is
divorced by his wife for having an affair with another woman named Ilatu. This excerpt relates a
cross-examination between the judge and Ilatu:

The judge questioned Ilatu, and said: “Why did you cause Sin-erimanni the herdsman to
divorce?” Ilatu heard the word of the judge, and said: “Sin-erimanni, the servant of my lord, has
been having intercourse with me until now; now that my lord has questioned me, he shall not
cross my bed-post.”\(^{101}\)

At the conclusion of the document, the judge exempts both Ilatu and Sin-erimanni on the
condition that their affair end immediately. This case is interesting for a number of reasons.
Under Hammurabi, the only laws allowing women to initiate divorce result from severe neglect
by their husbands. However, the Kassite court case is evidence of a wife wishing to divorce her
husband for an extramarital affair. Akin to the laws that sometimes relieved a married person’s

\(^{98}\) Ibid., Law 23.
\(^{99}\) Ibid., Law 14.
\(^{100}\) MacDonald, 40.
\(^{101}\) “UET 7/1 8,” in “The Enforcement of Morals in Mesopotamian Law” by Raymond Westbrook, *Journal of the
lover of blame, the judge releases Ilatu without punishment or fines. Although the court releases Ilatu without punishment, the judge still blames her for the potential break up of the marriage: “Why did you cause Sin-erimanni the herdsman to divorce?” Although Sin-erimanni is brought to court for his actions, he is also released without punishment and blame.

This case upholds the ancient Near East’s concept of adultery: a married man can only commit adultery against another married man, not his wife. Although both of the perpetrators in this case escaped punishment, the very existence of this case reveals the importance of family in ancient Near Eastern society. Westbrook notes:

The law of adultery in the ancient Near East was a complex affair. It was at the time an offence against the husband, for which he could claim certain remedies, and a sin, which bring down divine punishment. The husband was entitled to punish his wife for a breach of her marital duty of fidelity to him. He was entitled to seek revenge against the paramour up to the limit allowed by law…

From the above laws and court cases, it is obvious that ancient societies held women to higher moral standards than their husbands. There is no law or court case in which a wife may choose a form of punishment for her adulterous husband. Yet adulterous wives are often at the mercy of their husbands, and oftentimes killed for their infidelity. Are these punishments for immorality or punishments for wounded honor? The circumstances stated in the laws and court cases lean toward the latter. A woman of the ancient Near East was a representation of her family, and when she violated her marital contract by committing adultery it was to her husband, and not to society that she owed a penance. The punishment exacted against adulterous wives simultaneously reverted husband’s back to their positions of power in their families and women back to their positions of obedience. Whether a husband granted his wife mercy or inflicted capital punishment, his power over this decision restored the careful balance of families in which men were the decision makers and women the followers. The above laws and court cases show that society was not really punishing them for their immorality, but for their lack of control and lack of respect for the traditional family structure.

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Chapter Four: Oaths
Introduction

According to *The New International Dictionary of Biblical Archaeology* an oath is a solemn declaration made under divine sanction, may be assertive, promissory, or exculpatory. This definition explains the harsh punishments dealt for uttering oaths. Verbal phrases carried weight and oftentimes resulted in life or death situations for the accused and accuser. As seen in the adultery laws, a man could swear he did not know his lover was married and the law would pardon him. A woman could swear that she did not willingly commit adultery and the law might also grant her pardon. Did ancient Near Eastern societies require people to back up their verbal statements with proof, or were oaths so sacred that they did not require any proof beyond their utterance? This chapter specifically analyzes oaths used against women in cases of suspected adultery in ancient Near Eastern society.

Ur III

Just as the Ur III law collection contained only one law dealing with adultery, the laws also contain only one law dealing with accusations sworn against women for adultery. Law 14 reads:

> If a man accuses the wife of a young man of promiscuity but the River Ordeal clears her, the man who accused her shall weigh and deliver 20 shekels of silver.\(^{104}\)

Ur III lawmakers held oaths in high regard because a false accusation resulted in the potential loss of 20 shekels for the accuser if a court found his statement false. However, for the accused woman, the price was even higher because it forced her to undergo the deadly River Ordeal. Only after she faced death, would the law consider her innocent. This law, like the case of Nin-dada, shows how severely ancient societies could punish women for the mere accusation of promiscuity. Law 14 makes no mention of proof required to substantiate a man’s accusation. Perhaps no proof was needed because the River Ordeal would right everything in the end. As in laws of adultery, no parallel laws dealing with accusations of male promiscuity exist in the Ur III law collection.

Old Babylonia

Two Old Babylonian laws regulate accusations of adultery. Law 131 reads:

> If her husband accuses his own wife (of adultery), although she has not been seized lying with another male; she shall swear (to her innocence by) an oath by the god, and return to her house.\(^{105}\)

According to this law, a woman may prove her innocence with an oath to match her husband’s accusatory statement. Just as the law did not require the husband to provide proof for his accusation, it also did not require a wife to provide proof of her innocence. Law 132, however, did not place as much faith in a woman’s word. It reads:

> If a man’s wife should have a finger pointed against her in accusation involving another male, although she has not been seized lying with another male, she shall submit to the divine River Ordeal for her husband.\(^{106}\)

Unlike Law 131, the accusation against the wife comes from a third party who probably made his suspicions public. This in turn requires a more public pronouncement of wifely fidelity. A third party’s oath carried enough weight to put an accused woman through the River Ordeal. A woman’s oath of innocence was not sufficient. Lest one should think that accusations

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\(^{104}\) *Ur-Namma*, Law 14.

\(^{105}\) *Hammurabi*, Law 131.

\(^{106}\) Ibid., Law 132.
could be made whenever and by whomever without fear of acute retribution, Hammurabi’s lawmakers also included insurance against frivolous accusations with Law 127. It reads:

If a man causes a finger to be pointed in accusation against an ugbabtu or against a man’s wife but cannot bring proof, they shall flog that man before the judges and they shall shave off half of his hair.\(^{107}\)

Although the law makes no mention of a male accuser bringing proof against his accused, the harsh punishments exacted for lies probably inhibited reckless accusations. However, the punishments leveled against the accused were even more significant. Like the case of Nin-dada, even the mere accusation of illicit behavior caused the authorities to view the defendant suspiciously. Although Law 132 does uphold the concept of innocent until proven guilty, women had to undergo a dangerous trial to prove their innocence. The trial was the only means by which a woman could remove the stigma of adultery.

**Middle Assyria**

Tablet A contains only one mention of sexual accusations. Law 18 reads:

If a man says to his comrade, either in private or in a public quarrel, “Everyone has sex with your wife,” and further, “I can prove the charges,” but he is unable to prove the charges and does not prove the charges, they shall strike that man 40 blows with rods; he shall perform the king’s service for one full month; they shall cut off his hair; moreover, he shall pay 3,600 shekels of lead.\(^{108}\)

From this law, one cannot easily determine how accusations of promiscuity affected a wife because the substantiation of the accusation never occurs. This situation results in quite a dilemma for the accuser. Not only do authorities severely beat him and require him to perform “community service,” they also cut his hair and demand a substantial sum of cash from him. Like its predecessors, this law simultaneously protects a woman’s virtue while increasing a double standard of female purity and male promiscuity. MacDonald’s argument that the laws regulating female purity “were made neither to protect the women nor with any special regard for morality, but simply to avenge the husband of the woman,”\(^{109}\) is justified in that the punishments exacted for mere accusations rendered the actual act of an extramarital affair a heinous crime (i.e., the worst blow a woman could inflict on her husband). Although these laws appeared to protect women from false accusations, the laws worsened their situation should they actually commit adultery. As seen in the laws of adultery, a woman who committed adultery was often punished with death.

**Conclusion**

The few laws that deal with sexual accusations speak volumes about women’s ideological placement within ancient Near Eastern society. The laws regulating adultery show that ancient societies viewed female promiscuity as a crime; the laws regulating oaths show that ancient societies sometimes viewed association with promiscuity a crime. Only in one case is a woman’s verbal oath taken by faith; in all the others she must undergo the River Ordeal to prove her innocence. In this way, the River Ordeal can either serve as proof of her innocence or proof of her guilt because many of the laws fail to mention other means of proof that accusers must provide for their suspicions. Through these laws, one can determine that women of the ancient world must remain obviously blameless if they wished to live longer lives. A true woman of the ancient world was not only to do no evil; her society must perceive no evil in her.

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\(^{107}\) Ibid., Law 127, 105.

\(^{108}\) Tablet A, Law 18.

\(^{109}\) MacDonald, 42.
Chapter Five: Sexual Assault
Introduction
If ancient Near Eastern societies required purity from their women, then how did they react when that purity was forcefully taken from them? The high price society demanded from promiscuous women and women suspected of promiscuity also resulted in awareness of sexual assault crimes committed against women.

Ur III
The Ur III law collection contains one law dealing with the sexual assault of free women. Law 6 reads:
If a man violates the rights of another and deflowers the virgin wife of a young man, they shall kill that male.\(^{110}\)

Law 6 is a basic casuistic law: “if a person does this, then the person receives this type of punishment.” In this instance, the law protects females by imposing capital punishment on perpetrators of sexual assault. However, does the law protect women solely for women’s sake? From the wording of Law 6 – “if a man violates the rights of another and deflowers the virgin wife of a young man”\(^{111}\) – one might assume that punishments against sexual assault exist because the husbands of these women are disgraced, and not because the women themselves are harmed. Female virginity in the ancient Near East was a sign of eventual male genealogical purity “to ensure that only the groom’s male line would be perpetuated.”\(^{112}\) Purity served a direct purpose, and when a criminal forcefully stole that purity, the purpose of a woman’s virginity served became null and void. A man could no longer assure that the first child of his wife was his. Consequently, the retribution was exacted for the man’s benefit as much as the woman’s.

Old Babylonia
The lawmakers of Old Babylonia also punished rape with death. Law 130 reads:
If a man pins down another man’s virgin wife who is still residing in her father’s house, and they seize him lying with her, that man shall be killed; that woman shall be released.\(^{113}\)

Law 130 begs the question: If witnesses did not exist, would a claim of rape turn into suspected adultery on the woman’s part? The laws do not explicitly illuminate this aspect, but adultery and sexual accusation laws usually forced a woman to back up her word with the River Ordeal. Would she have to prove herself in similar fashion to support a claim of rape that no one saw?

The Old Babylonian laws also mention other forms of sexual behavior that are not labeled as “rape,” but could be classified as a form of sexual assault since the male players were obviously in a position of power over their female lovers. The first case deals with incest. Law 154 reads:
If a man should carnally know his daughter, they shall banish that man from the city.\(^{114}\)

Banishment from a city in the ancient Near East could in some cases be worse than death since it signaled a “loss of family, property as well as of citizenship.”\(^{115}\) In the case of Law 154, both the father and daughter are blamed for the sexual act without exception. The law mentions

\(^{110}\) Ur-Namma, Law 6.
\(^{111}\) Ibid., Law 8, 18.
\(^{112}\) Nemet-Nejat, 90.
\(^{113}\) Hammurabi, Law 130.
\(^{114}\) Ibid., Law 154.
\(^{115}\) Driver and Miles, Babylonian Laws, 318.
no conditions like age and temperament that would lead a court to solely blame the father and release the daughter.

Law 155 also mentions a familial sexual relationship, but this time between a man and his daughter-in-law. Law 155 reads:

If a man selects a bride for his son and his son carnally knows her, after which he himself then lies with her and they seize him in the act, they shall bind that man and cast him into the water.\textsuperscript{116}

As in the case of Law 130, the man must be seized during the sexual act to be proven guilty. Although the law does not specify what happened to the daughter-in-law, one can assume that like other rape victims, she was released without blame. Driver and Miles argue that in Law 155 the father was thrown into the water because he was really charged with adultery, not sexual assault. Their claim derives from the punishments female adulterers suffered when proven guilty. However, no other evidence of “male-instigated adultery” exists in the laws. The only case in which a man was even brought to account is the court case of Sin-erimanni, and he suffered no punishment for his actions. The punishment of death by drowning corresponds with the rape punishment in Law 130, and it is more likely that the father-in-law was killed because he violated his son’s trust, not because he violated his wife’s trust.

Laws dealing with sexual relations between men and their daughters-in-law do not end with Law 155. Law 156 reads:

If a man selects a bride for his son and his son does not yet carnally know her, and he himself then lies with her, he shall weigh and deliver to her 30 shekels of silver; moreover, he shall restore to her whatever she brought from her father’s house, and a husband of her choice shall marry her.\textsuperscript{117}

Unlike the wife of Law 155, the wife of Law 156 was a virgin and it was this factor that accounts for the major difference between the two punishments. In Law 156, the father was not killed, so whether Old Babylonian lawmakers defined this as a case of rape is uncertain. However, it is clear that they considered the crime heinous enough to allow a woman freedom from the preexisting marital contract with the man’s son. Law 156 is one of the only instances in which a woman, and not her family, was considered the sole victim. It is she who received the 30 shekels of silver, she who received the dowry, and she who then had the option to marry whom she chose. Although her family might play a role in the above circumstances, the law did not require that she must adhere to their wishes. No mention was made of reparations being paid to the man’s son or to the woman’s family. It was solely the woman’s reputation being restored. This condition renders Law 156 completely unique in the law collection of Old Babylonia.

\textbf{Middle Assyria}

Lawmakers of Middle Assyria built upon the sexual assault laws of their predecessors in similar and divergent ways. Law 12 reads:

If a woman should walk along the main thoroughfare and should a man seize her and say to her, “I want to have sex with you!” – she shall not consent but she shall protect herself; should he seize her by force and fornicate with her – whether they discover him upon the woman or witnesses later prove the charges against him that he fornicated with the woman – they shall kill the man; there is no punishment for the woman.\textsuperscript{118}

As in the earlier Ur III and Old Babylonian laws, certain conditions must be met for a crime to be considered rape. In the case of Law 12, a woman must be assaulted in public, she must not consent, she must attempt to fight the attacker, and she must be raped. Unlike earlier

\textsuperscript{116} Hammurabi, Law 155.
\textsuperscript{117} Ibid., Law 156.
\textsuperscript{118} Tablet A, Law 12.
laws, the man does not need to be seized in the middle of his assault for the crime to be considered rape. Proof can be used against him at a later date, although Law 12 does not state what type of proof lawmakers required. The mention of the public street in Law 12 has probably less to do with the actual assault happening in broad daylight than it serves as emphasis that such a casual sexual encounter negated all possibilities of “intrigue on the woman’s part” to fornicate.\textsuperscript{119} If the rape had occurred in her house or her attacker’s house, it would be difficult for a woman to prove that she was not a consenting partner.

Lawmakers also punished the rape of virgins with heavy fines and eye-for-an-eye policies where the punishment for sexual assault resulted in the rape of the attacker’s wife. Law 55 reads:

If a man forcibly seizes and rapes a maiden who is residing in her father’s house, who is not betrothed, whose [womb] is not opened, who is not married, and against whose father’s house there is no outstanding claim – whether within the city or in the countryside, or at night whether in the main thoroughfare, or in a granary, or during the city festival – the father of the maiden shall take the wife of the fornicator of the maiden and hand her over to be raped; he shall not return her to her husband, but he shall take [and keep] her; the father shall give his daughter who is the victim of fornication into the protection of the household of her fornicator. If he [the fornicator] has no wife, the fornicator shall give “triple” the silver as the value of the maiden to her father; her fornicator shall marry her; he shall not reject her. If the father does not desire it so, he shall “receive” triple silver for the maiden, and he shall give his daughter in marriage to whomever he chooses.\textsuperscript{120}

Law 55 restores a father’s rights before those of his daughter’s. The conditions under which Law 55 can be tried are clear. The rape must occur in the home of a young woman’s father’s house. The woman must be an unmarried virgin and she must not be engaged to another man. There must also be no outstanding claim against the woman’s family that a rapist could utilize to excuse his assault. Although the rapist in Law 55 is required to pay the fiscal portion of the punishment, his wife is also a portion of the punishment. Although blameless, she is sexually assaulted and kept by the father of the victim, never to be returned to her husband. The victim also pays for the crime in that her father can hand her over to the attacker to be married. The harshness of the rape laws leads MacDonald to note that “virginity was evidently a required condition for the ordinary marriage for if it was lost recompense was demanded.”\textsuperscript{121} Although money was demanded from the victim’s attacker, his life was not. If this were a case of adultery, both the man and the woman’s life could be in jeopardy, but in the case of rape, Middle Assyrian lawmakers diverged from the capital punishments of Ur III and Old Babylonia. The punishments for sexual assault were not the executions for committing adultery, implying that rape of an unmarried woman was “a comparatively trivial offence which may be compensated by a payment.”\textsuperscript{122}

The Assyrian laws also mention an instance absent from the earlier collections, that of consenting sexual relations between a man and a virgin. Law 56 reads:

If a maiden should willingly give herself to a man, the man shall so swear; they shall have no claim to his wife; the fornicator shall pay “triple” the silver as the value of the maiden; the father shall treat his daughter in whatever manner he chooses.\textsuperscript{123}

\begin{thebibliography}{99}
\bibitem{119} Driver and Miles, \textit{Assyrian Laws}, 40.
\bibitem{120} Tablet A, Law 55.
\bibitem{121} MacDonald, 38.
\bibitem{122} Driver and Miles, \textit{Assyrian Laws}, 37.
\bibitem{123} Roth, \textit{Assyrian Laws}, Law 56.
\end{thebibliography}
This law is clearly not a case of adultery, nor is it a case of sexual assault, yet it sets a precedent hitherto ignored in ancient Near Eastern laws. Unlike the laws of rape, Middle Assyrian lawmakers do not demand either the life of the man or woman as punishment. Akin to the laws of adultery, however, the lawmakers place the woman at the mercy of her father. No limits are specified, so one can deduce that the lawmakers actually mean that the father can punish the daughter “in whatever manner he chooses.” In the Ur III and Old Babylonian laws, virginity and consensual sex on the part of the virgin are rarely equated, as noted by J.J. Finkelstein:

Consent [of sexual relations] and unmarried women rarely occur together [whereas] the rape of unmarried women, on the other hand is more frequently dealt with…With married women, the correlation is reversed. Here instances of consent – understood as intentional adultery – appreciably outnumber cases of rape…The correlations, it would appear to me, are based on the experience of daily life. Unmarried women, even when betrothed, were usually minors, sexually speaking…therefore it would have been unusual for a girl in this age group to seek sexual experience on her own initiative…With married women on the other hand, a consentive situation is more readily envisaged.124

This correlation of virginity with rape and sexually experienced women with adultery enhances the apparent double standard of female and male sexuality in ancient law where women who engaged willingly in sexual affairs outside of their marriage were punished severely and men who mimicked similar behavior went unpunished because sex was a part of their “nature” that could not be modified.

This correlation of crimes explains a measure Middle Assyrian society took to keep women sexually pure and separate from the rest of society: veiling. Laws 40 and 41 explicitly detail who is and who is not to wear veils in public. A portion of Law 40 reads:

Wives of a man, or [widows], or any [Assyrian] women who go out in the main thoroughfare [shall not have] their heads [bare]. Daughters of a man […] with either a […] - cloth of garments or […] shall be veiled…When they go about […] in the main thoroughfare during the daytime, they shall be veiled. A concubine who goes about in main thoroughfare with her mistress is to be veiled. A married qadiltu-woman is to be veiled (when she goes about) in the main thoroughfare, but an unmarried one is to leave her head bare in the main thoroughfare, she shall not be veiled. A prostitute shall not be veiled, her head shall be bare…125

The rest of Law 40 and entirety of Law 41 details who should wear veils, who should not wear veils, and the punishments exacted to women who illegally wear veils. Veils in ancient society were a mark of a woman’s status, but also a mark of a man’s property:

Wives and daughters are to be veiled or to have their heads covered, or both, to mark them as the property of the husband and father, and as a warning to others to keep their hands off. Hence the hierodule who remains unmarried…is to be unveiled, and likewise the harlot, because she belongs to any man.126

Laws 40 and 41 do not mention punishments for women who neglect to veil themselves, but women who dishonestly veiled themselves, i.e. prostitutes and slaves, were severely punished. If a prostitute was proven guilty for wearing a veil in public, her clothing was taken, she was struck 50 blows with rods and hot pitch was poured over her head.127 If a slave woman was convicted of the same charge, her clothes were also taken, but instead of beatings, her ears

124 Finkelstein, Sex Offenses, 368.
125 Roth, Assyrian Laws, Law 40.
126 Jastrow, 11.
127 Ibid., Law 40.
were cut off. The law also demanded severe penalties against male witnesses who neglected to charge falsely veiled women. Punishments for men who did not report a veiled prostitute or slave resulted in 50 whippings with rods, being stripped of clothing, and conscripted into the king’s service for a month.

The above laws demonstrate that veils during Middle Assyrian times obviously separated women of purity from women of questionable backgrounds, but at what cost? Although the laws seem to indicate an interest in preserving females’ reputations, the severity of their punishments speak otherwise. The punishments for those who falsely donned a veil, morphs Laws 40 and 41 from preferences of dress code into an edict, which if broken, becomes a crime, and the person who broke it, a criminal:

The text…which lays down the law with regard to the veiling of women, is in one important respect peculiar, namely the laws are not set out in the form of a condition but takes that of a command. There is nothing of this sort in the Babylonian code nor elsewhere in these laws except in Tablet A, Laws 57-59 (incomplete fragments dealing with the physical abuse of women).

In all probability, to veil or not to veil, was probably not a choice decided upon by women, but by men who simultaneously wanted to mark off their property and also advertise who was for sale:

[Some women] were compelled to be veiled in places of public resort, and it was apparently an offence for them to have any dealings in business with or to speak to a man who was not a near relation. Adultery…was not a sin against morality but a trespass against a husband’s property.

A veiled woman in ancient Assyria was not only off limits to other men, but also effectively prevented them from engaging in sexual liaisons with a man who was not her husband. “The veil is the symbol of an honest woman, who naturally lays it aside in the presence of her husband; but to lift it in the presence of other men is a sign of immodesty.” Female purity was placed at such a high premium, that should a woman illegally assume its “cloak” of safety, she would be severely whipped and stripped of her possessions.

**Conclusion**

The laws of sexual assault further define women in the ancient Near East as victims of sexual crimes. Ironically, ancient Near Eastern societies treated their female victims much like they treat their female criminals in that the penalties paid existed to restore the woman’s family to rights more than they restored a woman’s rights to herself. If a woman was raped, then punishment demanded money or execution. But whom did these punishments serve? In the case of Middle Assyrian Law 55, the woman could legally be given to her rapist as his wife. Was this a punishment for the attacker or for the victim? Middle Assyria also attempted to shroud its sexually pure women behind veils. But did these measures exist to keep a woman safe from attackers, or to advertise to the general public that she was already claimed by another man?

The sexual assault laws contain a few obvious key points. First, women were not always blamed when a sexual act occurred. In several instances, the law demanded the man pay full punishment for exerting force on a woman. Second, most punishments for sexual assault mirrored the punishments for adultery in that men controlled the negotiations after the crime was committed. Only in one case, Old Babylonian Law 156, was the woman given the money and

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128 Ibid., Law 40.
129 Ibid., Law 40.
131 Ibid., 37.
132 Ibid., 134.
choice after the sexual assault to make her own decision about her future. In all the other cases, the father received compensation. Lastly, one ancient Near Eastern society used sexual assault as an excuse to veil its women from roving eyes. The level of security such a veil offered is unknown, but the measure to which it defined women as another man’s property is obvious.

From these laws of sexual assault and veiling, scholars can deduce that ancient Near Eastern societies held virginity at a premium. To keep women pure, the law punished men for their sexual transgressions, virgin women for their sexual transgressions, and required some women to don veils as a warning to potential attackers to keep their distance.
Chapter Six: Physical Assault

Introduction

The previous three chapters dealt solely with women and their sexuality. Chapter Six, like Chapter Five, deals with assault, but assault of a different nature. Although the Ur III collection does not contain laws about physical assault toward women, the Old Babylonian and Middle Assyrian laws are quite extensive on the matter. To what extent did ancient Near Eastern societies protect their women from physical harm?

Old Babylonia

The laws of Old Babylonia mention several occurrences in which women are physically assaulted. Laws 209-214 address instances in which physical assault against women results in miscarriage. Law 209 reads:

*If an awilu strikes a woman of the awilu class and thereby causes her to miscarry her fetus, he shall weigh and deliver 10 shekels of silver for her fetus.*

Laws 211 and 213 are worded the same as Law 209, except they deal with common women and slave women. Each of the three conditions details the compensation necessary for a miscarried fetus. The fetus of an awilu, or upper-class woman is worth 10 shekels; the fetus of a common woman is worth 5 shekels; the fetus of a slave woman is worth 2 shekels. The needless killing of babies was punished in this way because psychologically, “children meant the continuation of the family, security for the future and old age, workers, and last but not least, joy and happiness.”

Statistically “a woman likely would have had to bear between five and six children to maintain a stable population because only between one and three would survive to puberty.” Although a miscarriage could place the future economic livelihood of a family in jeopardy, the financial compensation offered for a dead fetus is remarkably small when compared with other monetary payments stipulated in Hammurabi’s Laws. The miscarriage of a high-ranking woman worth 10 shekels is pathetically small in comparison to Law 198 where an aristocratic man must pay 60 shekels to a commoner if he causes the commoner to lose an eye.

A common woman’s fetus was worth less than a common man’s cheek; her forced miscarriage resulted in 5 shekels, his struck cheek resulted in 10 shekels.

If one agrees with Johannes Renger in his argument that the above monetary compensations were created “to alleviate the results of such wrongful doing…toward a solution which allows all involved parties to live together peacefully in the future,” then may one also assume that women who miscarried were satisfied with this law?

Other laws show that a live child in the ancient Near East guaranteed a woman’s position as the first-ranking wife, as well as the preservation of the family unit. If she could not bear children, then her husband could divorce her or take a second wife. Ten shekels, five shekels, and two shekels did not compensate for placing her marital security in jeopardy.

Neither did the compensation offered for a woman’s life. Law 210 reads:

*If that [awilu] woman should die, they shall kill his daughter.*

Laws 212 and 214 read similarly except the commoner woman’s life is worth 30 shekels of silver, and the slave woman’s life is worth 20 shekels of silver. If one were to determine...

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133 Old Babylon, Law 209.
134 Seibert, 28.
135 Snell, 20.
136 Hammurabi, Law 198.
137 “Hammurabi,” Law 204.
139 Hammurabi, Law 210.
the value of women in the ancient Near East by the monetary values placed on their lives, then one can deduce that a commoner’s tooth (worth 20 shekels according to Law 201)\textsuperscript{141} is worth as much as a slave woman’s life, and that a common man’s eye (worth 60 shekels according to Law 198)\textsuperscript{142} is worth twice as much as common woman’s life.

**Middle Assyria**

The Middle Assyrian laws dealt physical punishment for physical assault. Law 21 reads:

If a man strikes a woman of the *a’iliu*-class thereby causing her to abort her fetus, and they prove the charges against him and find him guilty – he shall pay 9,000 shekels of lead; they shall strike him 50 blows with rods; he shall perform the king’s service for one full month.\textsuperscript{143}

This law seems similar to preceding laws in that physical assault is considered a crime not because the woman was assaulted but because the assault resulted in the loss of her child. The price of an unborn baby was higher in Middle Assyria than Old Babylonia or Ur III in that it required 9,000 shekels of lead from her attacker in addition to physical punishment and public service. Middle Assyria lawmakers also mention consequences for the physical assault on middle-class women and prostitutes. Law 51 reads:

If a man strikes another man’s wife who does not raise her child, causing her to abort her fetus, it is a punishable offense; he shall give her 7,200 shekels of lead.\textsuperscript{144}

Law 52 reads:

If a man strikes a prostitute causing her to abort her fetus, they shall assess him blow for blow, he shall make full payment of a life.\textsuperscript{145}

Again, the laws promote a hierarchy in that an upper-class woman’s fetus is worth 9,000 shekels, a middle-class woman’s fetus is worth 7,200 shekels, and a prostitute’s child is worth only physical punishment. None of the instances mention what occurs if the woman dies as well, but the wording of the punishments lead Driver and Miles to conclude:

The assault on the woman and her death, if she dies in consequence of it, are then regarded as an offence primarily against the husband, as he gets the compensation; this appears clearly from the rule that the penalty is death if the woman’s husband has no sons and the assault has deprived him of the chance of one.\textsuperscript{146}

If indeed shekels were a compensation for the husband, this statement might explain why the prostitute’s child warrants no financial penalty from the attacker.

Middle Assyrian Laws also contain provisions about physical assault for physical assault’s sake. Law 9 reads:

If a man lays a hand upon a woman, attacking her like a rutting bull, and they prove the charges against him and find him guilty, they shall cut off one of his fingers. If he should kiss her, they shall draw his lower lip across the blade of an ax and cut it off.\textsuperscript{147}

In the case of Law 9, kissing a woman warrants a greater punishment than attacking a woman like a rutting bull as the kiss warrants the loss of lower lip whereas the latter warrants the loss of only one finger. Such graphic images of physical abuse are not present in Hammurabi’s laws dealing with physical assault.\textsuperscript{148} However, punishments exacted for physical abuse against

\textsuperscript{140} Ibid., Laws 212 and 214.
\textsuperscript{141} Ibid., Law 201.
\textsuperscript{142} Ibid., Law 198.
\textsuperscript{143} Tablet A, Law 21.
\textsuperscript{144} Law 51.
\textsuperscript{145} Law 52.
\textsuperscript{146} Driver and Miles, *Assyrian Laws*, 107.
\textsuperscript{147} Tablet A, Law 9.
women, as opposed to punishments exacted for physical abuse resulting in miscarriages, are not present in Hammurabi’s edicts either. Although it is too bad it took a woman’s attacker to act “like a rutting bull” to warrant some legal intervention, the fact that laws existed to protect women from abuse, connote a certain amount of progression toward the treatment of women. Law 9 appears to be a straightforward eye-for-an-eye case in which the laws remove the body part that caused harm to the women. Similar to their earlier hypothesis regarding Laws 21, 51, and 52, Driver and Miles hypothesize that the punishments of Law 9 vindicate the woman’s betrothed, not her:

Now it is well known that boys and girls were married at an early age in Assyria. It may therefore be suggested that the wife, who is possibly little more than a child, has made fun of the man and that he, annoyed at her impudence, has picked her up and smacked her like a child. He is then punished not for injuring the girl but because by treating a man’s wife contumeliously he has insulted her husband.\textsuperscript{149}

Although Driver and Miles’ theory raises some skepticism – how they derived “picking up a girl and smacking her rear” from “attacking her like a rutting bull” – their argument about whom the punishment served bears consideration. Attacking a woman results in the loss of a finger, not a hand or arm, yet kissing her results in the grotesque disfigurement of a lip. And unlike the Middle Assyrian laws dealing with sexual assault, the crime of physical assault does not result in death. If the gravity of the crime can be viewed by the depth of the punishments, than physical assault ranks low on the hierarchy of crimes. Indeed, in many situations, physical assault is completely legal. Law 59 reads:

\begin{quote}
In addition to the punishments for [a man’s wife] that are [written] on the tablet, a man may [whip] his wife, pluck out her hair…\textsuperscript{150}
\end{quote}

From the incomplete phrases of Law 59, one can discern that the Assyrians had no desire to eradicate domestic violence against women, for a husband was permitted to inflict a variety of abuses on his wife. The Assyrians did, however, maintain a strong desire to eradicate domestic violence against men. Law 7 reads:

\begin{quote}
If a woman should lay a hand upon a man and they prove the charges against her, she shall pay 1,800 shekels of lead; they shall strike her 20 blows with rods.\textsuperscript{151}
\end{quote}

Law 8 reads:

\begin{quote}
If a woman should crush a man’s testicle during a quarrel, they shall cut off one of her fingers. And even if the physician should bandage it, but the second testicle becomes infected along with it and becomes…or if she should crush the second testicle during the quarrel – they shall gouge out both her…\textsuperscript{152}
\end{quote}

In Laws 7 and 8, no babies die and one can deduce that the hefty punishments exacted for abusing a man do not go to the man’s wife, but to the male victim. In these instances, a woman hitting a man is worth more financially than a prostitute’s child and more than a woman being attacked like a “rutting bull.” Law 8, like Law 9, results in an eye-for-an-eye punishment, where a woman is gouged for the infection of a man’s testicles. Lawmakers of today might view the gouging of a woman who infected a man’s testicles a bit harsher than necessary, but to the Middle Assyrians who allowed the whipping of women and the plucking of their hair as punishments, it seemed perfectly reasonable.

\textsuperscript{149} Driver and Miles,\textit{ Assyrian Laws}, 32.
\textsuperscript{150} Ibid., Law 59.
\textsuperscript{151} Ibid., Law 7.
\textsuperscript{152} Ibid., Law 8.
Conclusion

Russell Fuller argues that discrepancies in miscarriage laws concerning the worth of a woman’s fetus does not suggest differences in “personhood,” but instead differences in legal and social status. However, when a fetus is worth less than a cheek or an eye, one begins to wonder how valued female “persons” were in ancient Near Eastern society. From these laws, one can only deduce that the ancient Near East did not place a high value on women and their unborn children. A common woman’s life was literally worth less than the sum of her male peer’s body parts, and the punishment paid existed for her male relatives’ benefit over her own. It is ironic that men in the ancient Near East could suffer death for sleeping with another man’s wife, but not for inadvertently killing another man’s wife.

Chapter Seven: Betrothal

Introduction

The love songs of the ancient Near East are some of the most passionate anywhere:

Lordly Queen, your breast is your field,
Inanna, your breast is your field,
Your broad field that pours out plants,
Your broad field that pours out grain…
Pour it out for the lord, the bespoken one,
I will drink it from you. 154

But to what extent does poetry reflect daily life? Bendt Alster argues: “On the surface it is the temple cult and the royal court that come to light in the love songs, but many features, or whole poems, rather point to the secular social environment of ordinary people of some social standing…”155 However, ancient Near Eastern laws reveal that men and women operated under a marital system composed of legal contracts. A marriage usually consisted of an exchange of a dowry, a gift given by the bride’s parents to the groom, and a bride-price, a gift given on behalf of the groom to the bride’s family or the bride herself.156 As in modern countries that continue the practice of arranged marriages, parents of the ancient Near East controlled the marriage process throughout the betrothal. In turn, the laws rarely give the fiancé control in the proceedings, and never give the fiancée control in the proceedings.

Ur III

The only Ur III law that mentions betrothal deals with the instance of a broken betrothal. Law 15 reads:

If a son-in-law [enters] the household of his father-in-law but subsequently the father-in-law [gives his wife to his (the son-in-law’s) comrade], he (the father-in-law) shall [weigh and deliver to him (the jilted son-in-law)] twofold (the value of) the prestations [which he (the son-in-law) brought (when he entered the house)].157

In Law 15, a father breaks the betrothal contract with his daughter’s fiancé. He must pay twice the bride-price to the groom (or groom’s family) as payment for his broken promise. The ability of a father to negate a betrothal on the grounds of favoring another match for his daughter reflects the common four-step marriage process to which people of the ancient Near East adhered. The steps include: engagement, payments of the dowry and bride-price, the bride’s move to her father-in-law’s house, and sexual intercourse. All the steps had to occur before the law recognized a couple as legally married.158 Most families could not afford to pay the dowry and bride-price in one installment, so the exchange of money between the two families usually took place over a number of years, leaving plenty of time for families to change their minds about prospective in-laws. In addition, families usually betrothed their daughters as young girls, which delayed consummation until the girl was older.159

A woman’s inability to choose her husband in the Ur III edicts demonstrates that by this point, “matrimony was basically organized on patriarchal rules. The husband was acknowledged

157 Ur-Namma, Law 15.
158 Nemet-Nejat, 88.
159 Ibid., 88-90.
always and everywhere the undisputed head of the family, and his wife...his sons and daughters, all had to show him respect."\textsuperscript{160} Marriage in the ancient Near East “was not made according to sentiment, but to what was deemed useful and suitable for the welfare of the family.”\textsuperscript{161} Based on these principles, a father could legally choose his daughter’s future husband or break her betrothal agreement. The daughter could not do this, and one might also assume that in most cases her fiancé could not do this, but the fathers of the families were perfectly within their rights as the heads of the family to arrange and rearrange this business transaction of marriage to their liking.

**Old Babylonia**

Hammurabi’s laws also contain provisions for regulating broken betrothals. Law 160 of the Old Babylonian laws parallels Law 15 of the Ur III laws in that it legally allows a father to break his daughter’s betrothal:

> If a man who has the ceremonial marriage prestation brought to the house of his father-in-law, and who gives the bridewealth, and the father of the daughter then declares, “I will not give my daughter to you,” he shall return twofold everything that had been brought to him.\textsuperscript{162}

Again, the law requires the father to pay twice the bride-price back to the groom’s family as compensation for the broken promise. Hammurabi’s laws also explicitly allow a fiancé to break a betrothal. Law 159 reads:

> If a man who has the ceremonial marriage prestation brought to the house of his father-in-law, and who gives the bridewealth, should have his attention diverted to another woman and declare to his father-in-law, “I will not marry your daughter,” the father of the daughter shall take full legal possession of whatever had been brought to him.\textsuperscript{163}

In this law, the son-in-law must relinquish all claims to the bride-price he paid to his former fiancée’s family as a result of breaking his betrothal promise. The law does not mention the young man’s family, so one can assume that he is legally allowed to break a betrothal without his family’s consent. In this instance, the bride-price must come from his coffers instead of his family’s. In Laws 159 and 160, one can see that Old Babylonians upheld the Ur III concept of betrothal as a business contract:

> Legalizing a change in the ownership of property. Although the Old Babylonian laws reveal that a girl’s father and a girl’s fiancé could legally break a betrothal, they do not sanction the girl herself breaking the betrothal. This is because she is not an independent, property-owning member of the ancient Near East. In Old Babylonian marriages, a girl hitherto owned by her parents is transferred to the ownership of her husband, and in exchange for the girl and her dowry, the groom or his family is required to compensate the girl’s parents for their loss with a bride-price.\textsuperscript{164}

A marriage contract from the Old Babylonian period mentions a bride price of 10 shekels of silver, a dowry of two beds, two chairs, a table and two baskets, but nothing of love and affection.\textsuperscript{165} Indeed, “in a society where men control the marriage of their women so strictly because of their function in securing property, creating alliance and maintaining (or providing access to) status, the opportunities for spontaneous romance and ‘love-marriages’ are extremely

\textsuperscript{160} Seibert, 13.
\textsuperscript{161} Ibid., 24.
\textsuperscript{162} Ibid., Law 160.
\textsuperscript{163} Hammurabi, Law 159.
\textsuperscript{164} Sassoon, 66.
\textsuperscript{165} Pritchard, “Marriage Contract, Old Babylonian,” 544.
limited. Young women affected by broken betrothals are not compensated for their troubles because a dowry was not legally theirs until the marriage took place. Betrothals in the ancient Near East were binding agreements and a broken betrothal was quite expensive for the initiator, equaling the cost of an entire dowry or bride-price. In addition, "a proposed change of mind becomes a test of sincerity as well as of marriage as a commitment."

What does this exchange of goods and money mean for the women of the ancient Near East? Driver and Miles argue against the traditional concept of a “bride-price” as an invisible tag fixed upon every unmarried female. Although it is indisputable that a father does receive a monetary compensation for the loss of his daughter at marriage, Driver and Miles believe this agreed upon amount is enacted to secure the marriage only, much like a down payment. However, since no texts attest that the father relinquishes this “earnest money” back to the groom upon the marriage of his daughter, Driver and Miles’ hopeful hypothesis that women were more than commodities to purchase at a price in the ancient Near East seems implausible.

**Middle Assyria**

Unlike the laws of Old Babylonia and Ur III, however, the Middle Assyrian betrothal laws only refer to the instance of Levirate marriages. Law 30 reads:

If a father should bring the ceremonial marriage prestation and present <the bridal gift> to the house of his son’s father-in-law, and the woman is not yet given to his son, and another son of his, whose wife is residing in her own father’s house, is dead, he shall give the wife of his deceased son into the protection of the household of his second son to whose father-in-law’s house he has presented (the ceremonial marriage prestation). If the master of the daughter who is receiving the bridal gift decides not to agree to give his daughter (in these altered circumstances), if the father who presented the bridal gift so pleases, he shall take his daughter-in-law (i.e. the wife of his deceased son) and give her in marriage to his (second) son. And if he so pleases as much as he presented – lead, silver, gold, and anything not edible – he shall have no claim to anything eligible.

In this instance, the father of the groom is attending his future daughter-in-law’s home. However, his oldest son has died, and according to the custom of Levirate marriage, the father will marry the dead son’s wife to his next eldest son. Neither the second son, his fiancée, nor his older brother’s wife have control over the marriage arrangements in this instance. The authority solely rests on the son’s father. The people of Middle Assyria obviously respected this custom, since the father of the groom can break the pre-existing betrothal without much financial loss to himself. Law 31 also deals with a reverse Levirate marriage instance:

If a man presents the bridal gift to his father-in-law’s house, and although his wife is dead there are other daughters of his father-in-law, if he so pleases, he shall marry a daughter of his father in-law in lieu of his deceased wife. Or, if he so pleases, he shall take back the silver that he gave; they shall not give back to him grain, sheep, or anything edible; he shall receive only the silver.

In this instance, a man’s betrothed has died. By law, the man may either marry one of her sisters or ask for a return of the fiscal portion of his bride-price. Unlike Law 30, the young man in Law 31 exercises autonomy in his decision of whether to marry one of his former

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167 Sassoon, 70.
168 Driver and Miles, Babylonian Laws, 264.
170 Ibid., Law 31.
fiancée’s sisters. As in Law 30, however, the sisters still have no choice. Female’s dependence on men to regulate the betrothal process is also revealed in Law 48:

If a man [wants to give in marriage] his debtor’s daughter who is residing in his house as a pledge, he shall ask permission of her father and then he shall give her to a husband. If her father does not agree, he shall not give her. If her father is dead, he shall ask permission of one of her brothers and the latter shall consult with her (other) brothers. If one brother so desires he shall declare, “I will redeem my sister within one month, the creditor, if he so pleases, shall clear her of encumbrances and shall give her to a husband…”

In this instance a man has sold his daughter into slavery to pay a debt. Since she is now the property of another man, he maintains a degree of control over whom she marries. The girl’s owner must first, however, consult with the girl’s nearest male relative before promising her to another man. Again, in the instance of Law 48, the men make the arrangements for betrothal. The law does not require that families should consult the girl or her female relatives for their opinions.

**Conclusion**

As in the case of the other laws from the ancient Near East that regulate the actions of women, the betrothal process solely depended on the decisions of the men in the families. In Ur III, neither a fiancé nor fiancée are granted control over betrothals. However, in the laws of Old Babylonia and Middle Assyria, fiancés are granted control over the dissolution (and one can assume creation) of betrothals. Since society’s stability depended on the strength and number of its progeny, and legitimate over illegitimate descendants, marriage was one of the most important decisions a family could make. Whom a woman married was a major factor in her future fiscal and reproductive capabilities, yet the laws did not require her input in the decision.

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171 Ibid., Law 48.
Chapter Eight: Divorce

Introduction

Although the ancient Near East took great pains to maintain the family unit, laws allowed means by which a husband and wife could dissolve their union. Nine times out of ten, men retained the sole power to divorce their wives, though not usually without just cause or financial compensation.

Ur III

The two divorce laws from the Ur III period reveal that only men could initiate the dissolution of a marriage. Law 9 reads:

If a man divorces his first-ranking wife, he shall weigh and deliver 60 shekels of silver.\(^\text{172}\)

Law 10 reads:

If [a man] divorces a widow, he shall weigh and deliver 30 shekels of silver.\(^\text{173}\)

In analyzing the above laws, Seibert argues that “the husband encountered no special difficulties when he wanted to get rid of his wife.”\(^\text{174}\) On one level, her hypothesis rings true. Laws 9 and 10 do not mention why a husband could divorce his wife. Infertility? Sickness? Desire to marry another? Often, the ancient Near Eastern laws are explicit in stating the situations in which a person could take legal actions. A man could not submit his wife to the River Ordeal whenever he chose, but he could legally submit her to the River Ordeal as a result of sexual accusations. A man could not randomly kill his wife, but he could kill his wife as punishment for her adultery. Since neither Law 9 nor Law 10 stipulate why a man could divorce his wife, does this mean he could divorce her on a whim?

Even if the Ur III government did not require reasons for divorce, it did require payment from the husbands. The relatively large sum a man must pay his divorced wife leads Versteeg to argue that “the marriage laws show a strong desire to preserve families and to promote fidelity and the institution of marriage itself…several of these laws helped to preserve a wife’s interest in marital property and encouraged a husband to treat her fairly.”\(^\text{175}\) Nemet-Nejat agrees, stating that the monetary payment was enough to make a man think twice about divorcing his wife.\(^\text{176}\)

Old Babylonia

The 11 divorce laws of Hammurabi only partially coincide with the Ur III divorce laws. Law 138 reads:

If a man intends to divorce his first-ranking wife who did not bear him children, he shall give her silver as much as was her bridewealth and restore to her the dowry that she brought from her father’s house and he shall divorce her.\(^\text{177}\)

Law 139 reads:

If there is no bridewealth, he shall give her 60 shekels of silver as a divorce settlement.\(^\text{178}\)

Law 140 reads:

If he is a commoner, he shall give her 20 shekels of silver.\(^\text{179}\)

Unlike Law 9 and Law 10 from Ur III, Law 138 from Old Babylonia offers infertility as a reason for why a man could legally divorce his wife. Law 138 also stipulates a potentially

\(^{172}\) Ur-Namma, Law 9.
\(^{173}\) Ur-Namma, Law 10.
\(^{174}\) Seibert, 14.
\(^{175}\) Versteeg, 41.
\(^{176}\) Nemet-Nejat, 94.
\(^{177}\) Hammurabi, Law 138.
\(^{178}\) Hammurabi, Law 139.
\(^{179}\) Ibid., Law 140.
greater payment for the divorced wife’s compensation. Just a dowry could take years to acquire, and the law required the husband to return his wife’s dowry to her in addition to the total cost of the bride-price he gave to her father. In Law 139, he must return to her the 60 shekels in addition to the dowry, and in Law 140 he must give her 20 shekels in addition to her dowry.

Although the Old Babylonian laws do not require that husbands remain married to their barren wives, the laws do require that they remain married to them through illness. Law 148 reads:

If a man marries a woman, and later la’bum-disease seizes her and he decides to marry another woman, he will not divorce his wife whom la’bum-disease seized; she shall reside in quarters he constructs and he shall continue to support her as long as she lives.\textsuperscript{180}

Law 149 reads:

If that woman should not agree to reside in her husband’s house, he shall restore to her her dowry that she brought from her father’s house, and she shall depart.\textsuperscript{181}

In the above laws, a threatening disease has afflicted a man’s wife, and although the man is legally allowed to remarry, the law still required him to support his wife indefinitely. “Nothing is said of the relationship between the two wives…the second wife has the duty of supporting the first.”\textsuperscript{182} Law 149 also gives the wife a choice as to whether she wishes to remain with her husband until she dies. She may legally leave him if she so chooses, and he must return her dowry to her. Although, research has yet to discover the nature of la’bum disease, it was obviously fatal enough to sanction female autonomy.

In addition to the legal sanction to leave their husbands if threatened by a fatal illness, Old Babylonian women could also legally leave their husbands for other reasons. A wife divorcing a husband was not as simple as a husband divorcing a wife. Law 141 reads:

If the wife of a man who is residing in the man’s house should decide to leave, and she appropriates goods, squanders her household possessions, or disparages her husband, they shall charge and convict her; and if her husband should declare his intention to divorce her, then he shall divorce her; neither her travel expenses, nor her divorce settlement, nor anything else shall be given to her. If her husband should not declare his intention to divorce her, then her husband may marry another woman and that (first) woman shall reside in her husband’s house as a slave woman.\textsuperscript{183}

Like Law 9 and Law 10 from the Ur III period, Law 141 from the Old Babylonian period allows a spouse to leave for any reason. In Old Babylonia, if a man wished to leave his wife, he had to compensate her financially; if a woman wished to leave her husband, she had to watch her behavior. A woman’s “conduct was scrutinized and her behavior had to be above reproach. Otherwise she could be thrown out of her husband’s home both penniless and naked.”\textsuperscript{184} As a result of misappropriating her property or insulting her husband, the wife could suffer either divorce without financial compensation, or slavery by her husband.

An Old Babylonian woman could also refuse sexual relations with her husband. Law 142 reads:

If a woman repudiates her husband, and declares, “You will not have marital relations with me” – her circumstances shall be investigated by the authorities of her city quarter, and if she is circumspect and without fault, but her husband is wayward and disparages her greatly, that

\textsuperscript{180} Hammurabi, Laws 148.  
\textsuperscript{181} Ibid., Law 149.  
\textsuperscript{183} Hammurabi, Law 141.  
\textsuperscript{184} Nemet-Nejat, 95.
woman will not be subject to any penalty; she shall take her dowry and she shall depart for her father’s house.\(^{185}\)

Law 143 reads:

If [the ex-wife] is not circumspect is wayward, squanders her household possessions, and disparages her husband, they shall cast that woman into the water.\(^{186}\)

In Law 142, if the man’s behaviors prove reproachful, she may take her dowry and return to her family’s home. In Law 143, if the woman’s behavior proves reproachful, she is executed.

After reading Laws 141, 142, and 143, one wonders if a woman’s decision to leave her husband or refuse sexual relations with him were worthy of the repercussions they carried. Laws for female-initiated divorce include morality standards that laws concerning male-initiated divorce lack. If a woman is not justified in leaving her husband, she is either left destitute, enslaved, or killed as punishment. Female choice not only carried great responsibility, it also carried great double standards. Would women even want such autonomy?

In regards to divorce, Hammurabi’s collection also mentions a class of women absent from the Ur III laws – priestesses who wielded “no small measure of influence and power.”\(^{187}\) In the ancient Near East, wealthy families often dedicated one daughter to the temple. Her dowry included houses, field, orchards and/or slaves.\(^{188}\) Priestesses were arranged in a hierarchy. First, came the entum, or high priestesses. Second, stood the naditu, who could legally marry, but must remain celibate.\(^{189}\) Then came the priestesses of Marduk, Babylonia’s patron god, who had full control over their dowries, and thus could fund various business transactions with their property. At the bottom of the totem stood temple prostitutes and slaves. Saggs has argued that the singling out of priestesses, with no mention of priests, in Hammurabi’s code “indicates that they were in danger of becoming a depressed class, for whose protection Hammurabi, with his avowed purpose of succoring the weak, found it necessary to legislate.”\(^{190}\) However, their status in the laws reveals a position of power instead of a struggle for recognition. As seen in the divorce laws, the Old Babylonian government granted married priestesses greater autonomy than those given other wives. Law 144 reads:

If a man marries a naditu, and that naditu gives a slave woman to her husband, and thus she provides children, but that man then decides to marry a sugitu, they will not permit that man to do so, he will not marry the sugitu.\(^{191}\)

Law 137 reads:

If a man should decide to divorce a sugitu who bore him children, or a naditu who provided him with children, they shall return to that woman her dowry and they shall give her one half of (her husband’s) field, orchard, and property, and she shall raise her children; after she has raised her children, they shall give her a share comparable in value to that of one heir from whatever properties are given to her sons, and a husband of her choice may marry her.\(^{192}\)

Law 137 and Law 144 reveal that divorcing a priestess was not as easy as divorcing the average woman. Law 144 states that a man cannot under any circumstances divorce a naditu

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\(^{185}\) Ibid., Law 142.

\(^{186}\) Ibid., Law 143.

\(^{187}\) Seibert, 12.

\(^{188}\) Nemet-Nejat, 99.

\(^{189}\) Ibid., 100 – The ability for naditu to marry appears to be unique to Babylon – naditu in Sippar were not allowed such privileges.


\(^{191}\) Hammurabi, Law 144.

\(^{192}\) Ibid., Law 137.
who provided him with children through a surrogate mother. Although Law 137 appears to revoke the conditions of Law 144, it also states that if a man should divorce a priestess, he must give her half of his property and allow her to raise the children. The priestess is also entitled an inheritance share from her divorced husband and allowed to marry whomever she chooses. In contrast to this autonomy, Old Babylonian laws at best offered common women their dowry and bride-price. The fact that the law entitled the priestess to not only more property, but more autonomy demonstrates the higher place she held in the society. In the situation between a priestess and a common man, it is the common man who seems to take second-class status.

**Middle Assyria**

The preservation of family is not as great a concern in Middle Assyrian society. Whereas Ur III laws contained two divorce laws and Old Babylonian laws contained 11 divorce laws; the Middle Assyrian collection contains only one. Law 37 reads:

> If a man intends to divorce his wife, if it is his wish, he shall give her something; if that is not his wish, he shall not give her anything, and she shall leave empty-handed.\(^\text{193}\)

Like the divorce laws of Ur-Namma/Shulgi, the Middle Assyrian laws offer no reasons as to when a man could legally divorce his wife. Unlike earlier ancient Near Eastern laws, however, the law does not require the husband to offer monetary compensation, and “no legislation protected [a wife] if ill, against divorce, or gave her the right to divorce. She was infinitely more at the mercy of her husband than the Babylonian woman was.”\(^\text{194}\)

**Conclusion**

The common thread that runs through the above divorce laws is that none of the laws mention any official process necessary for the absolution of a marriage. The wording of the laws leads Versteeg to conclude that, “it is likely that the husband was required to make this declaration [of, ‘You are not my wife,’] in the presence of his wife and witnesses,” for the divorce to be legal.\(^\text{195}\) Greengus agrees that there was an official verbal statement made in lieu of a written one for the divorce to be considered legal during the Old Babylonian period.\(^\text{196}\) Although archaeologists have unearthed written contracts concerning marriage, divorce and inheritance, Greengus argues that they mostly dealt with “abnormal family situations,” where a wife had been a slave prior to her marriage, or an inheritance was contested and thus a doctrine was created “to support the rights and statuses of adopted, manumitted, or other legally vulnerable persons.”\(^\text{197}\) Most contracts were made verbally in front of a number of witnesses using “verbia solemnia,” or symbolic rights that create/negate contracts by pronouncing either in the positive, “You are my wife/You are my husband,” or declaring in the negative, “You are not my wife/you are not my husband.”\(^\text{198}\)

The declarative language of the laws in regards to marriage, divorce and accusations appears to correspond with Greengus’ hypothesis. Neither party would take such declarative oaths, made in front of witnesses, lightly. A man who wished to divorce suffered a fiscal loss, a woman who wished to divorce could suffer death.

With the exception of the one Assyrian law, the ancient Near Eastern divorce laws encouraged marriage. Although greater stipulations were placed against women to initiate dissolution, the stipulations placed against men were also great. Since polygamy was allowed in

\[^{193}\text{Tablet A, Law 37.}\]
\[^{194}\text{MacDonald, 41.}\]
\[^{195}\text{Versteeg, 88.}\]
\[^{197}\text{Ibid., 512.}\]
\[^{198}\text{Ibid., 514-517.}\]
most cases, divorce for infertility and illness was really a last resort for most men. Infertility, especially, did not always result in divorce despite the theory that “the most important role of a woman in marriage was to bear children – particularly sons, who were preferred as heirs…a man was expected to ‘build a house.’ To accomplish this goal, he married one woman. If she could not bear children, he took a second wife or concubine.”199

199 Nemet-Nejat, 88.
Chapter Nine: Abandonment

Introduction

Divorce was not the only means through which spouses separated. A spouse, usually the husband, would leave the other for extended periods of time on business, service for the government, or for personal reasons. If the family depended on the absent spouse for support, these periods of separation brought financial hardship to the family. In divorce, the government usually guaranteed support for the wife, but in separation, the government offered no guarantees. An absent husband was not required to send home monthly provisions for his wife, and thus the laws decreed a number of stipulations under which a woman might relieve financial burdens through another marriage. Like the laws of betrothals, the laws of abandonment regulated marriages as businesses more than love matches.

Old Babylonia

While the Ur III laws remain silent on the issue of abandonment, Old Babylonian laws are explicit in the options a woman could take if her husband left her. Law 133a reads:

If a man should be captured and there are sufficient provisions in his house, his wife …, she will not enter [another’s house].

According to Driver and Miles, Hammurabi defines “desertion” not by a husband leaving his wife for long periods of time, but by leaving his wife for long periods of time without provisions to sustain her in his absence. In the instance of Law 133a, the husband did not leave his wife by his own volition, and she is economically secure. Consequently, she has no excuse to seek another relationship.

Law 133b reads:

If that woman does not keep herself chaste but enters another’s house, they shall charge and convict that woman and cast her into the water.

Thus, if the wife broke Law 133a by choosing to live with another man, she was guilty of adultery and duly cast into the water.

In the laws of 133, the state is more concerned about the wife’s livelihood than her husband’s absence. In these instances, the husband did not leave his wife of his own volition, and she is economically secure. So, for her to engage in a relationship with another man is infidelity. Law 133b does not mention how long Law 133a holds sway. One might assume that until the husband is reported dead, or until she suffers financial distress, Law 133a takes precedence.

Law 134 reads:

If a man should be captured and there are not sufficient provisions in his house, his wife may enter another’s house; that woman will not be subject to any penalty.

Driver and Miles’ definition of “desertion” remains valid under Law 134, which allows a woman to seek financial security through another man if she cannot sustain herself from what her husband gave her.

Law 135 reads:

If a man should be captured and there are not sufficient provisions in his house, before his return his wife enters another’s house and bears children, and afterwards her husband returns and gets back to his city, that woman shall return to her first husband; the children shall inherit from their father.

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200 Hammurabi, Law 133a.
201 Ibid., Law 133b.
202 Ibid., Law, 134.
203 Ibid., Law 135.
This law corresponds with Driver and Miles’ theory, in that the wife cannot be blamed for seeking aid from another man because she had no other means of livelihood. Law 135 also takes into account that the husband cannot be blamed because he was taken by force. Because he did not depart from the city by choice, the law allows him to reclaim the family he lost upon his release. Law 135 does not mention any time frame in which the first husband’s rights take precedence over the second husband’s rights. Consequently, one can assume that regardless of the time he returned, the first husband’s rights to the wife would always take primacy.

The only instance where a wife could live with another man and remain was if her husband deserted the city voluntarily. Law 136 reads:

If a man deserts his city and flees, and after his departure his wife enters another’s house – if that man then should return and seize his wife, because he repudiated his city and fled, the wife of the deserter will not return to her husband.

Unlike the other Old Babylonian laws that deal with desertion, Law 136 does not measure a woman’s economic stability to determine whether a woman can leave her husband. Because the man “repudiated his city and fled” he loses all claims to his family. The language of Law 136 “the wife of the deserted will not return to her husband” indicates that the man was probably in trouble with the government. Consequently, because the city disowns him, the government does not allow the wife to return to him. Therefore, Law 136 protects a city’s interest to be permanently rid of a criminal more than a wife’s right to act independently in light of her husband’s desertion.

**Middle Assyria**

Assyrian laws contain two provisions for desertion. Law 36 reads much like the Old Babylonian desertion laws, except with more detail. It states:

If a woman is residing in her father’s house, or her husband settles her in a house elsewhere, and her husband travels abroad but does not leave her any…provisions…that woman shall still remain for her husband for five years…she shall not reside with another husband…at the onset of six years, she shall reside with the husband of her choice; her husband upon returning shall have no valid claim to her…if he is delayed beyond the five years but is not detained of his own intention…upon returning…he shall give a woman comparable to his wife and take his wife…and if the king should send him to another country and he is delayed beyond the five years, his wife shall wait for him (indefinitely)…if she should reside with another husband…and should she bear children…her husband, upon returning, shall take her and also her offspring.

Unlike Old Babylonian Law 134 and Law 135, Law 36 of the Middle Assyrian collection demonstrates little concern for a wife’s livelihood. The wife is required to wait for her husband for five years; only at the onset of the sixth year may she marry again to regain her economic security. Even if the husband returns after the six years, he can claim that he was held against his will and the law requires her to leave her second husband for her first. Unlike the Old Babylonian laws, Middle Assyrian Law 36 requires that the first husband compensate his wife’s second husband with a new wife.

The second Middle Assyrian desertion law deals with an instance absent from the Old Babylonian desertion law; that of a wife abandoning a husband. Law 24 reads:

If a man’s wife should withdraw herself from her husband and enter into the house of another Assyrian…residing with the mistress of the household…and the householder is not aware that it is the wife of a man who is residing in his house” could result in the mutilation and abandonment of the first wife by her husband and the amputation of ears of the woman with whom she

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204 Ibid., Law 136.
205 Ibid., Law 36.
In the abandonment laws where the husband is the perpetrator, the man must leave the area; in Law 24 where the wife is the perpetrator, she needs only to leave her house for another. In Middle Assyrian Law 36, a man could leave his wife for up to five years without suffering any loss. In Middle Assyrian Law 24, a woman’s withdrawal (length unspecified) from her husband can result in mutilation and abandonment for the wife. Just as the Assyrian laws do not allow a woman to divorce, so too she cannot leave her husband for a period of time without suffering painful retribution.

**Conclusion**

In the abandonment laws from Old Babylonia and Middle Assyria, marriage again takes precedence over individual desire. Again, the burden of the marriage bond falls on the woman. None of the laws explicitly state the reasons why men leave their wives, but they are explicit that these absences can number several years. In Old Babylonia, if a woman is economically secure, then she must wait for her husband indefinitely. In Middle Assyria, if a woman is abandoned for less than five years, then she must also remain alone. In contrast, a Middle Assyrian woman who leaves her husband for even a short period of time must forfeit her physical health and economic stability. The double standard at play here is obvious, and what purpose did it serve? Marriage over remarriage, marriage over singlehood, dependence over independence, and men over women.

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Chapter Ten: Inheritance

Introduction

The last group of laws analyzed in this thesis concern inheritance. Whether a person can own and deed property is a fair indicator of the degree of autonomy a person has in society. Although Ur III laws make no mention of inheritance, the subject of inheritance is dominant and detailed in both the Old Babylonian and Middle Assyrian laws. Every object in the ancient world was a commodity, and just as a society would not automatically entitle a divorced woman to half of what her husband owns, so too the law does not always entitle her to the entirety, or even sometimes any, of her husband’s wealth upon his death.

Old Babylonia

As in modern times, division of estates in the ancient Near East took place shortly after the death of the owner, and the judges of the temple divided the deceased’s property. The judges decided upon every item, from furniture to debts.\(^\text{207}\) Law 150 reads:

If a man awards to his wife a field, orchard, house, or movable property, and makes out a sealed document for her, after her husband’s death her children will not bring a claim against her; the mother shall give her estate to whichever of her children she loves, but she will not give it to an outsider.\(^\text{208}\)

In Law 150, the strength of the wife’s claim to her entitlement rests on the existence of the sealed document. Because her husband bequeathed her specific pieces of property in writing, her children have no legal claim to the property. The only stipulation the law places on a widow is that she must leave her estate to one of her children, instead of to a person outside the family. The law makes no mention of whether the woman may sell or rent the property to a non-family member during her lifetime.

A will excavated from Ugarit supports Law 150. In this legal document, the husband leaves everything to his wife upon his death, and explicitly protects her against lawsuits from her children. The will reads: “Whichever of [the children] shall bring a lawsuit against Bidawe, or shall abuse Bidawe, their mother, shall pay 500 shekels of silver to the king; he shall set his cloak upon the doorbolt and shall depart in to the street.”\(^\text{209}\) Surely the substantial fine of 500 shekels would deter any child from bearing false claim.\(^\text{210}\)

In the ancient Near East, a widow was not considered the head of the family if she had a son old enough to administer the estate,\(^\text{211}\) and thus it is not surprising that the law did not give her control over the distribution of assets because legally, she did not have control over the estate. “She probably had de facto use and control [of the estate]…as the property had been designated for her after her husband’s death, she would probably be regarded as de facto, though not de jure, owner of these.”\(^\text{212}\) Not all of the laws, however, explicitly state that a widow receives a share of the estate. Law 170 reads:

If a man’s first-ranking wife bears him children and his slave woman bears him children, and the father during his lifetime then declares to (or: concerning) the children whom the slave woman bore to him, “My children,” and he reckons them with the children of the first-ranking wife – after the father goes to his fate, the children of the first-ranking wife and the children of the slave woman shall equally divide the property of the paternal estate; the preferred heir is a son of the

\(^{207}\) Driver and Miles, Babylonian Laws, 333.
\(^{208}\) Hammurabi, Law 150.
\(^{210}\) Ibid.
\(^{211}\) Nemet-Nejat, 88.
\(^{212}\) Driver and Miles, Babylonian Laws, 270.
first-ranking wife, he shall select and take a share first. 213

In this law, a man has formally adopted his slave woman’s children and in doing so edged both his first-ranking wife and his lover out of an endowed livelihood. Although one can assume that women’s children would provide for them throughout their widowhood, the law does not require them to do so. If the law does not automatically entitle a wife to a fraction of her spouse’s estate, why should the law require that her children use a fraction of their estate to support her?

If a man never formally adopts his slave woman’s children, his inheritance includes only the first-ranking wife and her children. Law 171 reads:

But if the father during his lifetime should not declare to (or: concerning) the children whom the slave woman bore to him, “My children,” after the father goes to his fate, the children of the slave woman will not divide the property...the first-ranking wife shall take her dowry and the marriage settlement which her husband awarded to her in writing, and she shall continue to reside in her husband’s dwelling; as long as she is alive she shall enjoy the use of it, but she may may not sell it; her own estate shall belong (as inheritance) only to her own children. 214

In this law, because a husband did not explicitly entitle his wife to a portion of the estate, the law gives her only what was hers to begin with: the dowry and the marriage settlement. However, the law does not give her free reign over this inheritance. It is hers to use only during her lifetime, and she cannot sell it. Her estate belongs more to her children than to her. Even when a man did not give his wife a marriage settlement, the law still entitled her to her dowry. Law 172 reads:

If her husband does not make a marriage settlement in her favor, they shall restore to her in full her dowry, and she shall take a share of the property of her husband’s estate comparable in value to that of one heir...if that woman should decide on her own to depart, she shall leave for her children the marriage settlement which her husband gave to her; she shall take the dowry brought from her father’s house and a husband of her choice shall marry her. 215

Law 173 reads:

If that woman should bear children to her latter husband into whose house she entered, after that woman dies, her former and latter children shall equally divide her dowry. 216

Law 174 reads:

If she does not bear children to her latter husband, only the children of her first husband shall take her dowry. 217

Laws 172-174 expound on Law 171 in that they detail what actions a widow might take if she chooses to leave her husband’s home. She may still use the dowry to provide for her livelihood regardless. She may also marry another man. However, as in Law 171, the law still requires the woman to leave her dowry to her children. If she has children in her second marriage, then she must further divide its sum and leave them a portion equal to the inheritance she will leave to her children from the first marriage.

The Old Babylonian laws also contain a series of laws that regulate the dispersion of a woman’s dowry in the event that she predeceases her husband. Law 162 reads:

If a man marries a wife, she bears him children, and that woman then goes to her fate, her father shall have no claim to her dowry; her dowry belongs only to her children. 218

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213 Ibid., Law 170.
214 Ibid., Law 171.
215 Ibid., Law 172.
216 Ibid., Law 173.
217 Ibid., Law 174.
218 Hammurabi, Law 162.
Law 163 reads:
If a man marries a wife but she does not provide him with children, and that woman goes to her fate – if his father-in-law then returns to him the bridewealth that that man brought to his father in-law’s house, her husband shall have no claim to that woman’s dowry; her dowry belongs only to her father’s house.\textsuperscript{219}

Law 164 reads:
If his father-in-law should not return to him the bridewealth, he shall deduct the value of her bridewealth from her dowry and restore (the balance of) her dowry to her father’s house.\textsuperscript{220}

When a man dies before his wife, the law makes no mention of the dowry. Thus, one can assume that the dowry’s status as a portion of the man’s estate is undisputed. However, Laws 162-164 reveal that although the simultaneous exchange of the dowry and bride-wealth zeroing all debts owed to and by each family was merely temporary. Since the dowry existed in theory to provide for the daughter in her marriage and after her husband’s death, if she dies, then the purpose of the dowry is gone as well. So who is entitled to it? In Law 162, the dowry automatically goes to a woman’s children. But what if the woman had no children? Law 163 states that the dowry then belongs to the woman’s father. However, the father must return the bride-wealth in order to receive the dowry. If the father does not return the bride-wealth, then Law 164 still requires the husband to return the dowry. However, he may deduct the sum of the bride-wealth prior to returning the dowry. Without children, the dowry supports no relative from the woman’s family, and thus the dowry, as a family gift, must return to the family from whom it was originally obtained.

Old Babylonian inheritance laws also regulate the inheritance of priestesses. As in the case of divorce, priestesses maintained greater autonomy over their assets than the average free woman. A portion of Law 178 reads:

If there is an \textit{ughabtu}, a \textit{naditu}, or a \textit{sekretu} whose father awards to her a dowry and records it in a tablet for her, but in the tablet that he records for her he does not grant her written authority to give her estate to whomever she pleases…after the father goes to his fate, her brothers shall take her field and her orchard and they shall give to her…allowances in accordance with the value of her inheritance share, and they shall thereby satisfy her. If her brothers should not give to her…she shall give her field and her orchard to any agricultural tenant she pleases, and her agricultural tenant shall support her…she will not sell it and she will not satisfy another person’s obligations with it; her inheritance belongs only to her brothers.\textsuperscript{221}

Unlike other inheritance laws, law 178 guarantees that priestesses will have provisions upon their fathers’ death, regardless of whether the will offers them a share of the estate. Unlike Law 170, Law 178 legally requires priestesses’ brothers to support them. Brothers are required to support their priestess sisters through regular allowances, but if they fail in their duties, then priestesses may reclaim the land they owned prior to their father’s death and live from its proceeds. Since a hierarchy exists for priestesses, the law entitled certain priestesses to greater inheritance rights. Law 180 reads:

If a father does not award a dowry to his daughter who is a cloistered \textit{naditu} or a \textit{sekretu}, after the father goes to his fate, she shall have a share of the property of the paternal estate comparable in value to that of one heir; as long as she lives she shall enjoy its use; her estate belongs only to her brothers.\textsuperscript{222}

\textsuperscript{219} Ibid., Law 163.  
\textsuperscript{220} Ibid., Law 164.  
\textsuperscript{221} Hammurabi, Law 178.  
\textsuperscript{222} Ibid., Law 180.
Law 181 reads:
If a father dedicates (his daughter) to the deity as a *naditu*, a *qadistu*, or a *kulmasitu* but does not award to her a dowry, after the father goes to his fate she shall take her one-third share from the property of the paternal estate as her inheritance, and as long as she lives she shall enjoy its use; her estate belong only to her brothers.\(^{223}\)

In Laws 172-174, first-ranking wives are only entitled to their dowries and marriage settlements if their husbands die without specifically leaving them anything in their will. In Law 180, the priestess is given an equal inheritance share to manage; in Law 181, a priestess is given one-third from the entire estate. In both instances, she must leave the property to her brothers upon her death.

Laws 178 and 180-181 entitled priestesses to more independence than other women; however it is in Law 179 that their entitlement is completely equal to other men. Law 179 reads:
If there is an *ugbabtu*, a *naditu*, or a *sekretu* whose father awards to her a dowry and records it for her in a sealed document, and in the tablet that he records for her he grants her written authority to give her estate to whomever she pleases and gives her full discretion – after the father goes to his fate, she shall give her estate to whomever she pleases; her brothers will not raise a claim against her.\(^{224}\)

As in Law 150, a woman is explicitly written into a will. Unlike Law 150, Law 179 allows the woman to truly own her share. If a father give his priestess daughter a share in his will, she may invest or sell her property as she chooses. None of her male relatives have claim to it, and supposedly the law protects the priestesses from false claims by their brothers. However, a court case from the Old Babylonian Period demonstrates that disputes over inheritance did exist. Before her death, the priestess Amat-Shamash bequeathed to her adopted daughter a house-plot of 133 square feet. According to Law 179, she was entitled to do this if her father explicitly left her the house-plot in his will. Her brothers, Nidnusha and Shamash-apili, contested the inheritance arguing, “Amat-Shamash did not bequeath to you any house whatever, and executed no document in your favor; upon her death, you yourself drew up (such a document).”\(^{225}\) The court eventually favored the adopted daughter after male and female witnesses testified that a will had indeed been drawn up by Amat-Shamash. Although the judge explicitly stated the brothers and their siblings were forbidden to “re-institute the suit,”\(^{226}\) a later court case reveals that another brother tried once again to gain the house-plot from the adopted daughter despite the judge’s warning. For punishment of filing a “non-contestable document”\(^{227}\) the authorities “shaved half his head of hair, pierced his nose, extended his arm and marched him around the city,”\(^{228}\) as an act of humiliation. The court case of Amat-Shamash thus upholds the inheritance laws of the Old Babylonian period.

**Middle Assyria**

Middle Assyrian laws are also explicit as to the degree a woman can inherit and manage inherited property. Law 46 reads:
If a woman whose husband is dead does not move out of her house upon the death of her husband, if her husband does not deed her anything in writing, she shall reside in the house of her

\(^{223}\) Ibid., Law 181.

\(^{224}\) Ibid., Law 179.


\(^{226}\) Ibid.


\(^{228}\) Ibid.
own sons...her husband’s sons shall provide for her...if she is a second wife and has no sons of her own, she shall reside with one (of her husband’s sons) and they shall provide for her in common...\textsuperscript{229}

Like the Old Babylonian laws, the Middle Assyrian laws do not require husbands to leave their wives a portion of the estate. Law 46, however, is clear that in the case where a wife is not included in her husband’s will, the man’s sons must provide for her, even if she is their stepmother. Other inheritance laws regulate situations in which the wife was not yet living with the husband at the time of his death. A portion of Law 25 reads:

If a woman is residing in her own father’s house and her husband is dead, her husband’s brothers have not yet divided their inheritance, and she has no sons – her husband’s brothers who have not yet received their inheritance shares shall take whatever valuables her husband bestowed upon her that are not missing.\textsuperscript{230}

Law 32 reads:

If a woman is residing in her own father’s house and her [...] is given, whether or not she has been taken into her father-in-law’s house, she shall be responsible for her husband’s debts, transgression, or punishment.\textsuperscript{231}

In the instances of Laws 25 and 32, the wife has not yet moved to her husband’s house, and thus, the law does not give her the full legal rights of a Middle Assyrian wife, as seen in Law 46. In Law 25, the inheritance transfers to her husband’s brothers. In Law 32, however, a wife who did not move into her husband’s house prior to his death retained full responsibility for his debts and crimes. Although she bears the brunt of her former husband’s transgressions, like the women of Old Babylonia, she is still not entitled to determine to whom she leaves her dowry.

Law 29 reads:

If a woman should enter her husband’s house, her dowry and whatever she brings with her from her father’s house, and also whatever she brings with her from her father’s house, and also whatever her father-in-law gave her upon her entering, are clear for her sons; her father-in-law’s sons shall have no valid claim. But if her husband intends to take control of her, he shall give it to whichever of his sons he wishes.\textsuperscript{232}

The law explicitly allows a woman’s dowry to go to her sons. However, a husband may overrule this custom at his choosing.

Conclusion

If the ability to own property indicates the amount of autonomy a member of society maintains, then women, for the most part, maintained none. In the several inheritance laws, there is only one instance in which a woman can sell her inherited property or deed the property to a person of her choosing. The law does not uniformly require husbands to leave their wives property, and at best, wives who inherit property from their husbands are merely managers of the holdings. There is no mention of women holding property in their own right either. The property they managed was either given to them by their husbands or fathers.

\textsuperscript{229} Tablet A, Law 46.
\textsuperscript{230} Ibid., Law 25.
\textsuperscript{231} Ibid., Law 32.
\textsuperscript{232} Ibid., Law 29.
Conclusion

Samuel Noah Kramer asserts “that the Sumerians cherished and valued goodness and truth, law and order, justice and autonomy, wisdom and learning, courage and loyalty – in short, all of man’s most desirables virtues and qualities.”233 How did man’s most desirable virtues include women? The law expected goodness of women, sometimes upon pain of death. The law expected truth from women, as seen with the River Ordeals they were forced to endure. The law expected order from women and explicitly regulated their movements as daughters, wives, and widows. The law expected loyalty from women, especially toward their husbands. But what of justice, freedom, wisdom and learning?

Researching primary sources in an attempt to uncover the roles women played in the ancient Near East is fraught with problems. Scholars are “at the mercy of fragmentary, accidental materials, visual and written, which with few exceptions are male-authored, male-produced and male oriented.”234 Even though the law collections are relatively lengthy in comparison to other documents from the time, they are not comprehensive sources depicting women’s roles in the ancient Near East. However, they do offer a solid beginning from which to do research. In comparatively analyzing the primary sources what theme bears the most weight: continuity, change, or transformation of women’s legal status?235

Within Ur-Namma’s/Shulgi’s laws, women no longer maintained the theological power their forebears held in the early days of Mesopotamia. Although the laws did not render them powerless, women could not wield control of their lives to the same degree as their male counterparts. Women in Ur III could not choose their husbands or divorce them. Society punished female adultereresses with death, and forced women accused of sexual promiscuity to the brink of death to prove their innocence.

Whether the women of Old Babylonia experienced more autonomy than the ladies of Ur III is debatable. Under Hammurabi, women could divorce their husbands, but not without putting their own life on the line. Women could inherit property, but they could only manage their entitlement. The priestesses of the time experienced autonomy similar to men, but still not equal to them, and their small numbers compared to the vast numbers of regular women render naditu and the like, an exception.

Women’s situation in Middle Assyrian society requires a mere adjective to describe it: “oppressive.” The laws of Tiglath-pileser I sanctioned a harsher regime than women hitherto had experienced. Their legal position as victims of physical abuse and abandonment leaves little room for dispute that the women of Assyria experienced acute subjection.

Consequently, although one might find some change among the legal status of women in ancient Near Eastern law, it is a minute change that leads more toward continuity than transformation. The placement of women in the laws support the thesis that “gender has been

235 Judith M. Bennett, “Theoretical Issues: Confronting Continuity,” in Journal of Women’s History, Volume 9 (1997), 74 – In her essay, Bennett promotes that “transformation” is the preferred conclusion for women’s history. However, she argues that although women have experienced “change” throughout their historical experience, their status has rarely “transformed.”
the most important factor in shaping the lives” of women.\textsuperscript{236} Though the laws reveal varying degrees of treatment in respect to a women’s class, it was their status as females that set them apart. Ancient Near Eastern laws did not regulate men’s actions to acute extent it did for women.

An Akkadian proverb states: “The one who does not support a wife, who does not support a son, is a dishonest person who does not support himself.”\textsuperscript{237} In like manner, the above laws have demonstrated that a woman who did not honor her husband with her fidelity and her family with predictable behavior was worthy of death. The family unit itself was a commodity, a primary unit by which these ancient societies were stabilized, and allowed family members to pursue their own interests at the expense of the unit could wreak havoc on a world that already had enough uncertainty with which to contend. Although many of these laws hindered women’s choices, were the laws created with that intent in mind? Sassoon argues that the “concept of family as property provided an intellectual framework simple enough for all within it to understand their place and functions, and it was close enough to reality to ensure acceptance,”\textsuperscript{238} concluding that Mesopotamian women were indeed content with their status in life.

That women were held in less esteem than men cannot be denied when looking at law codes that express a clear double standard. Although the family unit was unarguably an essential stabilizing force in the ancient world, men were still in charge of how that unit was created, (i.e. betrothal), managed, (i.e. polygamy), distributed, (i.e. inheritance) and oftentimes dissolved (i.e. abandonment/divorce). Indeed, the common thread that weaves these three cultures’ laws together is the placement of men in law codes as controllers of family life, economic life, and, one can assume, the justice system.

To measure women’s autonomy in society, Joan Kelly-Gadol argues that one must answer four questions.\textsuperscript{239} How did society regulate women’s sexuality compared to men’s sexuality? How great is women’s access to property, political power, and education? Did women’s influence help to shape societal institutions? How did societal institutions idealize women in comparison to men? The ancient Near Eastern laws show that women’s sexuality was held at a premium – women were usually punished with death for adultery, men were sometimes not punished at all. Women’s access to property is limited, and although priestesses might have had access to education, most women would not have required the rudiments of the three R’s for daily, household tasks. Since women were rarely property owners or autonomous beings that could move where they chose, their ability to shape societal institutions beyond the family unit is doubtful. One could argue that women were more idealized than men, and thus suffered harsher punishments when they disrupted those ideals. Ideals that can easily turn sour do not equal autonomy. Van de Mieroop argues that a “stark opposition” in gender roles is “too essentialist and too simplistic,” however, the laws do not allow for many instances in which men’s and women’s roles overlap.\textsuperscript{240}

“It would not be exaggerating to point out that [the ancient texts and tablets] we have are but a fraction of a fraction of the possible evidence,” and the evidence we have about ancient


\textsuperscript{238} Sassoon, 65.


\textsuperscript{240} Marc Van De Mieroop, \textit{Cuneiform Texts and the Writing of History} (London: Routledge, 1999), 159.
Near Eastern women is yet another fraction of the fraction. This reality, however, does not diminish the degree to which we can ascertain ancient Near Eastern values through the lens of gender. Gender historiography has since moved beyond its initial precepts to “‘find’ woman’s place in ancient societies and, at long last, to give her the credit she deserved.” Through the lens of gender, we can ascertain that justice in the ancient Near East did not directly apply to women, and nor was that the goal of the ancient legal system. Ancient societies concerned themselves with stability and whatever it took to maintain it. The term “women’s rights” did not exist, and the term “men’s rights” did not exist as long as those rights could be seen as opposed to the goals of state. As a result, women played a small role in the workings of the surroundings that extended beyond the family unit, and spent their lives in a transfer of power from their fathers to their husbands and eventually their sons.

To truly determine how societies idealized women, one must look at the myriad of other sources left by ancient Near Eastern societies including literature, correspondence, and art. The study of laws reflecting these ideals covers only a fraction of the sources we have, but it does serve as a solid beginning. From the laws, one can begin to see how ancient society valued women, and from the ancient Near East, one can see the historical beginnings of how women were treated and viewed as subordinates. It is for other scholars to further evaluate this impact on the ancient Near East through other evidence, and it is for other scholars to determine how ancient perceptions of women permeated into later societies, and has had a significant historical impact on how past and present societies value women.

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