Klíma, Josef

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THE *PATRIA POTESTAS* IN THE LIGHT OF NEWLY DISCOVERED PRE-HAMMURABIAN SOURCES OF LAW

While attempting to dedicate a few lines pertaining to the early history of some legal problems to the imperishable memory of the great Master, we hope to be in not too remote a contact with the wide scope of Pierre Jouguet's scientific work. The deceased has himself, in several of his works, specially in *L'impérialisme Macédonien et l'hellénisation de l'Orient* (1926) shown us various connections of the oriental history of law with that of the oriental legal culture on the development of the legal und cultural life in other centres of Antiquity as well as numerous parallel phenomena in the mentioned fields. In the same work, Jouguet also repeatedly mentioned the Babylonian law-monuments (mainly the Code of Hammurabi) and stressed their value.

Choosing for this occasion some newly discovered documents concerning the Sumerian and Old-Akkadian stipulation of the paternal power, we do so, in order to demonstrate on the basis of this small example something of the early history of an institution which later attained, in Roman legal activities, such a characteristic role. We may here only remember the well known passage in Gaius (*Inst.* I 55), in which this jurist would not keep it from his compatriots that the famous Roman *patria potestas* pertained only to the Romans: *...fere enim nulli alii sunt homines qui talem in filios suos habent potestatem qualem nos habemus...*, adding immediately: *...nec me praeterit Galatarum gentem credere in potestate parentum liberos esse.* Thereby his hint points to the Near-East, the analogical structure of which with the *patria potestas* is certainly not without interest.

The investigations in the field of the development of the power pertaining to the head of the family have for a long time previously proved that this institution fulfils a mission of wide importance.

Many of the fundamental works which investigate[1] the *patria potestas* legally and historically, and at the same time as per Wenger's suggestions,[2] also from the angle of comparative law, have shown us the great part played by this institution. It represents not only the axis of legal family relations, but its expressions appear far more in all fields of private law, and partly the public law as well.

This has already been proved by the oldest documents which have been preserved in the cuneiform law sources, and which have been given special attention by Martin David[3]. He has already succeeded in ingeniously demonstrating the characteristic of the family- and paternal power respectively, according to the older cuneiform sources. His writings have shown us, in masterly conciseness, the different development and structure of this institution in the individual old-oriental law systems and have complemented the picture of the *patria potestas*, as it was previously drawn-up mainly by Cuq[4] and Koschaker[5] in the field of the old Babylonian sources, by comparing this law with other systems of the Ancient Orient as well as the Hellenistic and Roman world.

It is not the purpose of the present lines to offer a profound description of the *patria potestas* according to the cuneiform law sources, which we should like to leave to fundamental treatment on another occasion, but rather to attempt to record the oldest normative regulation of this institution as it appears from the recently discovered Akkadian and Sumerian sources[6].

[1] Viz. mainly the studies by R. Taubenschlag concerning *patria potestas* (*SZ* 37, 177 ff.) and *materna potestas* (*SZ* 49, 115 ff.), furthermore his work *The Law of Greco-Roman Egypt in the Light of the Papyri*, 97 ff.; Bonfante, *Corso* I (*Diritto di famiglia*), 74 ff.; Kaser, *SZ* 58, 62 ff.; *SZ* 59, 31 ff.; Volterra, *RIDA* I, 213 ff., *Riv. It. p. le Scien. giur.* II 103 ff. *Acad. naz. dei Lincei, Rend. d. cl. di scienze mor., stor. e filol.* f. 11—12, Ser. VIII, vol. IV (1949), 516 ff. Comp. also the review of the last papyrological literature by E. Seidl, *SDHI* XV 1949, 346.

[2] Comp. e. g. Wenger, *Krit. Vierteljhschft*, 3 F., vol. XVIII 1—2, 3; E. Weiss, *Rechtsvergleichung, Rechtsgeschichte und bürg. Recht.* in *Serta Mauroviciana*, 251 ff.; as the latest Koschaker, *AOr* XVIII 3/4.

[3] Comp. M. David, *Der Rechtshistoriker u. seine Aufgabe*, 23 ff.

[4] Cuq, *Etudes sur le droit babylonien*, 21 ff., 62 ff. s., also previously Meissner, *Bab. u. As.* I 389 (with numerous documentation of sources), Kohler, *Allg. Rechtsgeschichte*, 57 („*Väterlicher Despotismus*").

[5] Koschaker, *ZA* (1935), 212 ff.

[6] Hereto we should like to remark that we may not expect in these oldest documents nor, for that matter, in all the other oriental documents, the system or the mentality and the completness of purport, to which we are otherwise

Although the new verification of the old-oriental chronology reduced the dating of the old Babylonian history, as it was usual still a short time ago, by more than two centuries [7], this gap is now being bridged by the new discoveries of pre-Hammurabian law [8]. Three most important discoveries which have been made in recent years and which throw light on the oldest Akkadian and Sumerian legal activities, concern us in our present task.

We should like to concern ourselves mainly with the laws of Bilalama of Eshnunna written in Akkadian, dating from the 20th century [9], as well as the Sumerian ones of Lipit-Ishtar of Isin, which made their appearance approximately 50—60 years later [10].

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accustomed, according to the model of the Roman law sources. (Comp. in this connection G. Furlani, *SDHI* VI 1, 1942, 175). Futhermore we should not forget that the treated sources have only been preserved to us in fragments and that their stipulations are in many places damaged, so that their text is at times considerably or even entirely unintelligible.

[7] Comp. also Poebel, *JNES* I (1942) 247 ff. Further Albright, *BASOR* 88 (1942) 28 ff.; Van der Meer, *The Ancient Chronology of Western Asia and Egypt*, 1947; S. Smith, *Alalakh and Chronology*; Böhl, *King Hamurabi of Babylon in the setting of his time*, 1946, lately Hrozný, *Histoire de l'Asie Antérieure, de l'Inde et de la Crète* (1947) 20 ff.; A. Pohl, *Orientalia* 18 (1949), 264 and Klíma, *AOr* XVIII 2.

[8] A period of time of approx. 225—235 years is concerned, so that we may again take the middle of the 20th century B. C. as point of issue for the dating of the Sumerian and Akkadian pre-Hammurabian law texts.

[9] *Editio princeps* (with transcription, auto- and photographies and English translation) prepared by A. Goetze, *Sumer* IV 2, 63 ff. In the same work, see also his preliminary report (p. 52 ff.); Comp. also Taha Baqir, *Sumer* IV 153 ff. and Salah ed Din al-Nahi *Sumer* V 37 ff. A. Goetze has given on the occasion of the XXI International Orientalistic Congress in Paris (1948) a most interesting report on the subject of this important discovery under the title of *The Laws of Eshnunna*. (It was published in a short extract in the Congress-acts, page 136). Further comp. A. Pohl *Orientalia* 18, 126 ff.; San Nicolò, ibidem p. 258 ff., and in *SHDI* XV 24 ff.; Miles-Gurney, *AOr* XVII 2, 174 ff.; Von Soden, ibidem p. 368 ff.; A. Goetze *Mesopotamian Laws and the Historian*, *JNES* 69, 115 ff.; Klíma, *AOr* XVI 3—4, 326 ff. and in *Nový Orient* V 1950. An edition comprising the entire Bilalama collection, equipped with an explaining commentary is being prepared by A. Goetze jointly with M. David. According to the preliminary notification by M. David, *Een nieuwontdekte Babylonische wet uit de tijd voor Hammurabi*, p. 26, and thereto now San Nicolò, *Orientalia* 19, 93 ff. A new Holland translation (with transcription) gives F. Th. Böhl, *Ex Oriente Lux* XI.

[10] Comp. F. R. Steele, *AJA* 51, 158 ff. and the complete edition in *AJA* 52, 425 ff., also published as a special copy in the *Museum Monographs* of "The University Museum, University of Pennsylvania, Philadelphia" under the

The third source, consisting of a fragment, furnishes documentary proof of the attempt of a codification by the Dadusha of Eshnunna in the already just pre-Hammurabian period. Its unfortunately only very fragmentarily preserved Akkadian text has so far only been briefly commented upon[11] by the discoverer and its complete edition has therefore yet to be awaited.

I. The collection of Eshnunna, which has deprived the Hammurabian code of law of the fame of being the first Akkadian codification, offers many points of interest to our subject, although we may naturally not expect, as has already been said, that it offers us a systematic exposition of the institute under consideration. We must, on the contrary, very frequently approach the facts we seek through its diverse stipulation indirectly and by extensive interpretation. Furthermore, the question remains to be answered to what extent the already published tablets of Eshnunna will be complemented by further discoveries of the same kind.

The birth of the child was, as can be taken from several stipulations of the CB (*Codex Bilalama*), considered as one of the most important juridical facts. We can bring forward in its support direct as well as indirect documentation: in § 59 CB we read the following stipulation: A IV 29—32:

29	*šum-ma awilum māri*^{meš} *wu-ul-lu-ud-ma aššа(t)-su*	when an a. separates from his wife
30	*i-zi-im-ma [ša-]ni-tam i-ta-ḫa-az*	which has borne him children and marries another woman,
31	*i-na bitim ù ma-l[a i-b]a-šu-û in-na-sà-aḫ-ma*	he loses his family community and his entire property
32	*wa-ar-ki ša i-ra-a[m-m]u-ši it-ta-la-ak* [12]	and follows the one he loves.

The family community created with the birth of the child can therefore not again be dissolved simply by the mere

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title *The Code of Lipit-Ishtar*. Comp. further the same author in *AOr* XVIII 1 (489 ff.). Philological and juridical comments are contained in the contributions by Falkenstein and San Nicolò in *Orientalia* 19, 103 ff.

[11] Comp. Taha Baqir, *Sumer* IV 52 ff.

[12] The completing of the final line is according to Von Soden, *AOr* XVII 2, 373.

declaration of will by the father. The father is at liberty to separate from his family community, must however depart empty-handed, his property remains to serve further as economical security to his family.

Bilalama does not concern himself with the divorce of a childless marriage, to the precise regulation of which Hammurabi devoted his §§ 138—140 [13]. On the other hand we find in § 18 CB another, if indirect confirmation of the significance carried by the birth of the child: should a marriage end after short duration (which could be deemed to mean also its childlessness) by the death of the wife, the dowry returns to the father-house of the deceased. Two conclusions can be drawn therefrom:

a) the new family has not become a reality before the child was born, for whom otherwise the dowry of his mother would have to be reserved, and

b) on the other hand the deceased was deemed to belong to her father-house and her dowry therefore was to be returned to the latter [14].

If the husband becomes a prisoner of war, but manages to liberate himself, the family community is not dissolved, even if the wife should in the meantime have cohabitated with another man and born him children. The stipulation of § 29 CB does not actually require a state of distress of the wife, as does § 135 CH, forces the wife however to return to her first husband (doubtless with the children, she had born him during the previous period) [15]. If the husband has fled (as traitor of his country e. g.), his power ends according to § 30 CB [16], since the family community is thereby dissolved.

[13] On the other hand we find no contradiction to § 59 CB in the CH; since § 137 CH only treats the divorce from a *šugītum* or *nadītum*, not however with a lay wife; the divorced husband does however not in this instant loose his entire property, but refunds the wife only the dowry and a part of the fields, garden and movable property, while the wife enters the obligation to bring-up the children (in details comp. mainly Van Praag, *Droit matrimonial assyrobabylonien*, 193 ff.).

[14] Naturally taking the bride-price into account (comp. hereto San Nicolò, *Orientalia* 18, 259; see also the indication concerning the relation of § 18 CB to § 163 CH).

[15] This is contained only in the final words of § 135 CH (*mārê wa-ar-ki a-bi-šu-nu il-la-ku — the children follow their father*).

[16] Similarly as according to § 136 CH.

It may well be assumed that these oldest Akkadian legal prescriptions reckoned with the paternal power as an already developed legal institution by stipulating a relatively comprehensive regulation of the dissolution of a family community. Many a point in this connection may be left to thorough future investigations, to which the already announced discoveries of clay tablets of juridical contents in Eshnunna may well represent an important contribution[17]. With the scope of our subject we could e. g. point out one important question resulting from the above mentioned § 59 CB, i. e. the public or juridical control of the Old Akkadian *patria potestas*[18]: was there an authority which, similarly as somewhat later the *šibut ālim* or a *puḫrum*, excercised the power of judges[19]. In the so far known Eshnunna fragments we find no stipulation concerning the father's right of exposure, which, no doubt existed as it is indicated by the Sumerian term for foundling: tul. ta pad. da[20]. The existence of exposure of children in Eshnunna is indirectly confirmed by the stipulation of the CB concerning the nursing-contract (§ 32). The entrusting of the child to a strange woman *ana šunuqim, ana tarbītim — for feeding and bringing up* could naturally not only concern the bodily children of mothers who could or would not fulfil this task, but primarily foundlings, who represented a welcome workfellow[21] for the adoptive parents after having growing up. The child was handed over by the father to the nurse according to § 32 CB (similarly as in § 194 CH).

[17] Comp. herewith Taha Baqir, *Sumer* IV 137 ff., Klíma, *AOr* XVI 332 Remark 4; recently Taha Baqir, *Sumer* VI 39.

[18] The stipulation of § 168 CH signifies an evident limitation of the *patria potestas* by subjecting the expulsion of the son by the father to control by a tribunal. Hereto Klíma, *Festschrift Koschaker* III 80 ff.

[19] This would allow to assume the influence of a people's assembly, which Koschaker mentions in the Hittite legal institutions (*Deutsches Recht* 1941 Heft 7, reviewing the work by F. Wieacker, *Hausgenossenschaft und Erbeinsetzung*).

[20] Comp. hereto Meissner, *Bab. u. Ass.* I 391 ff. (with several text-citations) and mainly M. David, *Adoption* 16; newly comp. I. Mendelsohn, *Slavery in the Ancient Near East* 5. To the Roman „*ius exponendi*" comp. spec. Lanfranchi *SDHI* VI (1940) 5—69.

[21] The adopted child was at the same time a cheaper workman in comparison to normal paid labour or even to a slave whose sometimes rather high purchase price may have appeared as a drawback to the procuring of slaves. (Comp. now also I. Mendelsohn, l. c. 117).

In variance to the CH, the amount of compensation [22] which the father has to grant to the nurse, is also fixed in the CB. The case of unlawful substitution of a child, which forms the main subject of § 194 CH, is treated in the CB independently under § 33. After interpretation of this stipulation by Von Soden [23] it is remarkable that in the CB the stress is not layed on the punishment [24] of the fraudulent nurse (whose function is here even carried out by a slave), but on the exercising of the *patria potestas*. When the father recognizes his child even later, he can apply *ius vindicandi*. Thereby the legislator doubtlessly intended to protect the freeborn class from loss of its members, which is also substantiated by the following § 34 CB. The right of the palace to the children of the palace-slave is enforced analogically in case the slave handed over her child to a *muškēnum* for bringing up [25].

Whoever wishes to adopt such a child for himself is at liberty to keep the child against compensation in favour of the palace [26].

There is yet a further group of prescriptions of the CB, those which concern the betrothal and the conclusion of a marriage contract, where the importance or rather the juridical relevance of the *patria potestas* is placed in the foreground: we find that the Bilalama collection here represents an important stage of development by removing the older form of marriage *per usum* and acknowledges that of the marriage by purchase.

The agreement by the bride's father was, according to § 25 CB, a condition of the betrothal, since the bride-groom is obliged to request his future father-in-law to give him his daughter. The same prescription shows us [27] that this agreement was in no way

[22] The compensation for the nurse was determined either in products (corn, oil, wool) or in money (10 mines of silver for 3 years).

[23] In *AOr* XVII 371 Von Soden gives a new explanation of Goetze's reproduction of the § 33 CB by the following words: *Wenn eine Sklavin lügt und ihr Kind einer Bürgertochter gibt...*

[24] According to § 194 CH the nurse, in whose care the entrusted child dies, and who inlawfully substitutes a strange child without the parent's agreement, is punished by cutting off of her breast.

[25] From the terminological point of view it is worth remarking that this stipulation mentions not only the *māru* (*son* or *child*) as do solely the above mentioned stipulations, but also the *mārtu* (*daughter*).

[26] We conform with Miles-Gurney (*AOr* XVII 185) in this interpretation of the mentioned stipulation.

[27] Similarly as later according to § 160 CH.

irrevocable, but only obliged the bride's father [28] to pay double the bride-money, if he desired to withdraw from the first betrothal of his daughter in order to give her to another bridegroom. A betrothal without the agreement of the bride's father was no doubt void and should even an abduction of a daughter already betrothed to another man have occurred, the perpetrator would have been punished by death (§ 26 CB).

It is therefore not surprising that in § 27 CB the form of marriage *per usum* is expressly excluded. We may assume with great probability, that Bilalama wished to put the marriage *per usum*, a still customary institution in his time, out of law when he strove to enforce the new form of marriage.

A contract [29] accompanied by the agreement of the bride's father (and mother — the bride-groom's parents are never mentioned [30]) was the absolute condition of a marriage community.

For founding this community, the will of the participating daughter's parents was essential. It was therefore within the scope of the *patria potestas* [31] whether the daughter should leave her own family in order to enter another community [32], whereby her own family also lost her work capacity.

It is certainly not much, but at the same time not quite without interest, what Bilalama's collection tells us about the struc-

[28] Von Soden (*AOr* XVII 370) ventures to explain the not quite clear opening of § 26 CB (comp. also San Nicolò, *Orientalia* 18, 259) by reproducing the expression *ikšišu* as *he commits injustice.*

[29] The terms *riksātum u girrum* are very probably meant to correspond to the notion of a *sealed contract.* To *girrum* comp. San Nicolò *Orientalia* 18, 259 F and mainly Miles-Gurney, *AOr* XVII 184 with reference to Driver's interpretation of the expression *girrum* in the sense of a *sealed document* (comp. *Semitic Writing*, 62 n. 4).

[30] The § 128 CH only speaks of the contract, the paternal agreement is not mentioned here.

[31] It is naturally not quite clear whether the agreement of both parents was required, or whether that of the mother only found expression when the father was either not alive any more or restrained from giving same. Regarding the analogical position of the Hittite mother at the expulsion of the son from the family home (§ 171 Hitt. coll.), comp. newly E. Neufeld, *AOr* XVIII 3/4.

[32] The presumption of San Nicolò that marriage according to the CB was also possible without *riksātu* and *girru*, which is supported by § 28 CB, requires, in view of the new interpretation of this law for which we thank Von Soden (comp. *AOr* XVII 370) a correction: The *ul*, as read by Goetze, should be reproduced as U_4.*BI* (= *in its time, in good time*).

ture of the Old Akkadian family and the *patria potestas* of the time.

We do not learn at which moment its exercise over the children should end, which for the Sumerian period, David[33] brings into connection with the moment of the son's becoming capable of work. The Eshnunna fragments also contain no stipulation concerning the dissolution of the family community when expelling the son. We do not wish however to deny the existence of this manifestation of the *patria potestas*, since § 24 CB otherwise indirectly teaches that the child (and the wife) could be handed over to the creditors as gage[34].

Regarding the characteristic of the Old Akkadian family community, the stipulation of §§ 38, 39 CB could furthermore be taken into consideration: § 38 treats the regulation of the legal relationship concerning property, between the sons, after the father's death, (i. e. after the extinction of the central power in the house), in the following sense: every son wishing to separate from the inheriting community by selling his part is obliged to leave it to another partner of the community of brothers and moreover at half the purchase price which would otherwise have been offered him by an extraneous[35]. The following stipulation (§ 39) regulates, in case the house was to be sold further, the retract (in the field of family law) from the person to whom the owner, being probably in penury, had to sell it. This stipulation also doubtless serves the maintenance of the family property in the hands of these family members who did not wish to dissipate the paternal inheritance.

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II. When judging the material which we propose to use for our subject from the second mentioned source, the Lipit-Ishtar collection (= CL), we must also not forget that its stipulations

[33] S. M. David, *Der Rechtshistoriker*, 25.

[34] This stipulation refers to the special case of an unlawful acceptance as gage of a child of the wife of a *muškēnum* (not evidently of an *awēlum*-member of the free class where naturally the legal protection was obvious). This act was punished by the death of the creditor (comp. Miles — Gurney, *AOr* XVII 182; Von Soden, ibid. 370, San Nicolò, *Orientalia* 18, 260 with indication to the analogy with § 116 CH); further comp. Siegel, *Slavery during the third Dynasty of Ur*, 12; Mendelsohn, l. c. 5.

[35] Comp. hereto San Nicolò, *Orientalia* 18, 261; Klíma, *AOr* XVIII 2.

only form a torso, in spite of all admirable and certainly very painstaking efforts of their publisher F. R. Steele. Through his conscientious work the picture of the fragments of the so-called Sumerian Codex (= SC), which have already been published 30 years ago by Lutz, was in many respects completed and extended, but we are still, in spite of the recent discovery of a new fragment [36], far away from a full reconstruction of the entire SC [37].

As we have already said, the CL is by more than 50 years younger than the Bilalama Collection and therefore we have studied the latter in the first place. The CL does certainly not form the oldest Sumerian law codification, since we know that the father of its author, Ismēdagan is mentioned in the contemporary literature as legislator [38]. This brings us to almost the same period that produced the Eshnunna Collection by Bilalama. The relatively high perfection of legislative technique as apparent from the prologue and epilogue of the CL, as well as the consistently arranged wording of the various stipulations (the so-called tukumbi-form), confirms this assumption.

What the CL teaches us concerning the contents of the Sumerian *patria potestas* is certainly not quite satisfactory. We shall not, on this occasion, discuss any further the stipulations concerning this institution [39] which was already contained in the so-called Sumerian family law, and in the fragment A of the SC as published by Clay respectively. What the CL now offers us for the *patria potestas* concerns mainly the law of family property.

The most important stipulation which Steele's fragments of the CL bring us for our subject is in my opinion in article 31, the beginning of which is unfortunately damaged:

Col. XVIII 5—11

5	... in . na . an . si	... he has given to him
6	egir . ad . da . uš. a . ta	after their father's death

[36] Hereto Steele, *AOr* XVIII 489.

[37] Regarding this reconstruction see detailed Steele, *AJA* III 3 (1948); recently San Nicolò, *Orientalia* 19, 112.

[38] In this connection Falkenstein, *Orientalia* 19, 103 n. 1.

[39] This regulates specially the expulsion of the son. Hereto more Klíma, *Festschrift Koschaker* III 80 ff.

7	ibila. e. ne	the heirs shall
8	é. ad. da i. ba. e. ne	divide the paternal estate
9	ha. la. é. a	the parts however
	nu. un. ba. e. ne	they shall not divide
10	inim. ad. da. ne. ne	the word of their father
11	a. a nu. un. ne. ne	they shall not speak to water

Though this prescription stipulates a regulation only for the period after the father's death, it confers such a penetrating power to the *patria potestas* as emanating from the disposition *mortis causa*, that it allows us to imagine the *patria potestas* within the life time of a Sumerian father. The most important in this article is the metaphoric construction inim. ad. da. ne. ne a. a nu. un. ne. ne.

It is not so important for the legal interpretation of this in itself not quite clear construction, whether we interpret it according to Steele (in the sense: they shall not *cook their father's word in water*)[40] or according to Falkenstein (in the sense: *sie werden das Wort ihres Vaters nicht ins — bzw. aufs — Wasser sprechen*[41]). In both cases this stipulation in its meaning conveys, that the disposition *mortis causa* of the father (inim) should be strictly preserved for all time.

This conception of the Sumerian *patria potestas* makes us doubt whether it really did find no expression in the economical field as David[42] ventures to presume, in spite of the indisputably controlled character of the autocratic Sumerian state organisation[43]. The links of the Sumerian family community appear to be strong enough to prevail even by the side of this state autocracy, which placed the son within the scope of public law, in many senses under its care[44]. Cases where the son occupied a dignity in the service of the palace or the daughter became priestess,

[40] Steele, *AJA* LII 3.

[41] Falkenstein, *Orientalia* 19, 110.

[42] David, *Der Rechtshistoriker* 24 ff.

[43] A suitable illustration thereto is offered by Koschaker, *ZA* N. F. XIII 135 ff.

[44] The confrontation of the *patria potestas* and the autocracy of the state also existed in Rome, comp. hereto the discussions e. g. by F. Schulz, *Prinzipien des röm. Rechts*, 112 ff. (mainly page 115, mentioning in remark 25 further literature as well).

are rather to be considered as exceptions (similarly as e. g. in the case of Roman vestal virgins).

This also bears upon the question of the annulment of the Sumerian *patria potestas* after the dissolution of the family community in case of a division of the father-house (*divisio paterna*), or the marriage of the child of the house respectively. The first alternative is not testified by the hitherto known fragments of the CL, we possess however other documents which do prove that not even the *divisio paterna* signifies an absolute cessation of the *patria potestas*, but that same continues to exist in the sense that the father retains the right to withdraw the heritage-portion from such of his sons, who does not fulfil his duty of alimony towards him [45].

Regarding the effect of the marriage of the child on the *patria potestas*, we are partly informed by the CL in art. 29, where moreover the withdrawal from the betrothal by the future father-in-law is treated[46]. For us it is here mainly worth remarking that the bride-money is payable by the future son-in-law (and not by his father) and also refundable to him.

When we also take art. 32 into consideration (the final words of which unfortunately remain illegible) we learn, that the right to fix the bride-money was reserved to the father. The choice of expression in this article, col. XVIII 16, is worth remarking: igi. ad. da. ti. la. še 17 dam ba. an. tuku = *in presence of the still living father took* (i. e. *the son*) *a wife*. The large gap in the text (of approx. 17 lines) which follows after these words, prevents us from discussing not only the close of this article, but also its connection with the subsequent prescription. With this reserve we may presume that an influence, if not even the right of approval of the son's marriage was due to the father. Whether this influence was limited to the oldest son only, who was to represent

[45] E. g. according to the tablet UM VIII 1, 16 (KU 1437) from the Northern Sumerian city Nippur dating from the period of the Damiq-ilishu (1st. dyn. of Isin), approx. more than 100 years after Lipit-Ishtar; comp. hereto Klíma, *Untersuchungen zum altbabylonischen Erbrecht*, 74 ff., in which still further documentation concerning the *divisio paterna* of the Hammurabian and post-Hammurabian period is mentioned.

[46] Analogically to § 25 CB which however imposes no prohibition of another marriage by the bride. We also find this prohibition in § 161 CH where it is even supplemented by the obligation to repay the double *tirḫātum* (similarly as in § 25 CB) comp. San Nicolò, *Orientalia* 19, 117.

the paternal family community, or whether it applied to all sons, does not follow from this stipulation.

The daughter, bringing her husband a dowry from her father-house is thereby considered to be satisfied [47] as regards the inheritance law. The moment she gives birth to her husband's children (sons), her dowry remains reserved to them. According to art. 24 CL this holds good at least for the issue born by the second wife (within the time) to a widower; the paternal property is divided between the sons of both wives [48]. Should sons of a legitimate wife and a slave-girl be concerned, the paternal property belongs, according to art. 25 CL only to the legitimate sons, and moreover without regard to the effected liberation of the descendants of the slave-girl. The latter is therefore never subjected to the power of her father as his *patria*, but to his *dominica potestas*. In case, however, the husband whose wife was barren obtains progeny by a prostitute, he wins, according to art 27 CL, the full *patria potestas*, whereby the children also obtain the right to inherit from their father [49].

It is regrettable that the state of both documents (CB and CL) which have numerous gaps does not advance our discussions concerning the power of the chief of a house community to any considerable extent. As far as we can judge, the regulation of this *patria potestas* is almost invariably connected with questions of property law. Every member of the Sumerian as well as the Old-Akkadian house community, apart from the unfree, was not only object to the *patria potestas*, but in a certain sense also subject of certain rights (dowry for daughters, inheritance for the sons, protection from intervention as well as abuse by third persons) which could naturally not all develop and enforce themselves immediately [50].

[47] Art. 21 CL mentions no reserving of the dowry in favour of the children.

[48] Regarding the analogy with § 167 CH comp. mainly San Nicolò, *Orientalia* 19, 115.

[49] Furthermore the husband is obliged to grant the prostitute who has become mother of children an alimony (corn, oil and wool); the prostitute is however not entitled to live in the same house with the legitimate wife.

[50] This double aspect of the *patria potestas* also found expression in the non-juridical cuneiform sources of a later period. When we find in them on the one hand the appeal, e. g.: *Who does not honour his father will rapidly perish* (comp. Meissner, *Bab. u. Assyr.* II 421, according to *KARI* 300, Rs 6 ff.), this is on the other hand supplemented by: *The strong man lives on the price of his wages, but the weak one on the price of his child* (*AJSL* XXVIII 236, 7 ff.).

It was not our aim to offer an exhaustive description of the *patria potestas* as it appears in the Old-Akkadian and Sumerian legal sources, we merely attempted to briefly point out some characteristic traits of this institution which may be of use to its further development as well as to law comparative studies.

[Praha — University] *Josef Klíma*