THE KISS AND THE EARNEST

Early Roman Influences on Syriac Matrimonial Law*

Introduction

The *Syro-Roman Lawbook*[1], a legal composition from the end of the fifth century[2], is regarded as one of the early signs of the influence of Roman law on Syriac Christianity. Its Roman law and probable translation from Greek, together with the limited evidence of Roman legal

[1] The manuscripts and translations of the *Syro-Roman Lawbook* differ both in the order of the laws and in their versions. The first to publish a Syriac manuscript and a Latin translation of this composition was J.P.N. LAND, *Anecdota Syriaca*, I, Lugdunum Batavorum, 1862-1875, p. 30-64 (Syriac), p. 128-155 (Latin translation) (= LAND, *Anecdota Syriaca*). This edition was followed by an edition of other manuscripts in Syriac, Arabic and Armenian, and a translation and commentary in German, by K.G. BRUNS – E. SACHAU, *Syrisch-römisches Rechtsbuch aus dem fünften Jahrhundert*, Leipzig, 1880 (= BRUNS – SACHAU, *Syrisch-römisches Rechtsbuch*). Sachau published three other Syriac manuscripts in E. SACHAU, *Syrische Rechtsbücher*, I, Berlin, 1907-1914 (= SACHAU, *Syrische Rechtsbücher*). Two versions were published by Arthur Vööbus with an English translation, one called the *Synodicon*, and the other the *Syro-Roman Law Book*, see: A. VÖÖBUS, *The Synodicon in the West Syrian Tradition*, I-II (*Corpus Scriptorum Christianorum Orientalium*, 367-368; *Scriptores Syri*, 161-162), Louvain, 1975-1976; IDEM, *The Syro-Roman Law Book: the Syriac Text of the Recently discovered Manuscripts*, Stockholm, 1982-1983. To these publications we may add short publications of various fragments. The latest publication is that of W. SELB – H. KAUFHOLD, *Das syrisch-römische Rechtsbuch*, I-III (*Veröffentlichungen der Kommission für Antike Rechtsgeschichte*, 9), Wien, 2002 (= SELB – KAUFHOLD, *Syrisch-römische Rechtsbuch*), who published a critical edition, a translation into German and a commentary. For a detailed survey of the earlier publications, see M. ESKHULT, *The Syro-Roman Lawbook and Local Legal Costum*, in *Symposium Syriacum VII = Orientalia Christiana Analecta*, 256 (1998), p. 149-157; SELB – KAUFHOLD, *Syrisch-römische Rechtsbuch*, I, p. 27-36. This publication: A. VÖÖBUS, *An Unknown Recension of the Syro-Roman Lawbook* (*Papers of the Estonian Theological Society in Exile*, 28), Stockholm, 1977, is in fact a different collection, the *Sententiae Syriacae*, published again with a German translation by W. SELB, *Sententiae Syriacae* (*Österreichische Akademie der Wissenschaften. Philosophisch-historische Klasse. Sitzungsberichte*, 597), Wien, 1990 (= *Sententiae Syriacae*).

[2] For a survey of research regarding the place and date of the *Syro-Roman Lawbook*, see SELB – KAUFHOLD, *Syrisch-römische Rechtsbuch*, I, p. 43-50.

influence on earlier Syriac sources, seem to indicate that the Greco-Roman legal system started influencing Syriac Christianity in the fifth century[3]. However, recent research has shown that the Greco-Roman influence on Syriac Christianity did not start in the fifth century, but can be traced back to earlier sources dating from the fourth century[4]. Furthermore, research on the legal influence on Syriac Christianity focused mainly on legal literature, which is quite rare prior to the fifth century[5], while non-legal Syriac sources were hardly discussed in this context. The search for evidence of law and custom in non-legal sources will show that the influence of Roman law on the practice and writings of leading Syriac Christian writers is earlier than thought to date.

Two customs in the process of betrothal are found in two sequential rulings from the *Syro-Roman Lawbook*. These customs will serve as test cases in the study of the early Roman influence on Syriac Christianity. In the first centuries of the Common Era matrimonial law was perceived as part of the civil law, i.e. Roman law. Only gradually, in a process ending in the Middle Ages, did the church gain full authority over matrimonial law[6]. By the fifth century, the time of the *Syro-Roman Lawbook*,

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[3] In a frequently cited article Sebastian Brock describes the different phases of Greek influence on Syriac Christianity, see S.P. BROCK, *From Antagonism to Assimilation: Syriac Attitudes to Greek Learning*, in N.G. GARSOÏAN – T.F. MATHEWS – R. THOMSON (ed.), *East of Byzantium: Syria and Armenia in the Formative Period (Dumbarton Oaks Symposium, 1980),* Washington DC, 1982, p. 17-34. For some of the vast literature discussing the minor Hellenistic influence on Syriac language and culture until the fifth century, see J.F. HEALEY, *The Edessan Milieu and the Birth of Syriac*, in *Hugoye*, 10.2 (2007), p. 115-127. For a survey of Syriac translations, see S.P. BROCK, *Greek into Syriac and Syriac into Greek*, in *Journal of the Syriac Academy*, 3 (1977), p. 406-422.

[4] See, for example, U. POSSEKEL, *Evidence of Greek Philosophical Concepts on the Writings of Ephrem the Syrian* (*Corpus Scriptorum Christianorum Orientalium*, 180; *Subsidia*, 102), Louvain, 1999, and her survey of the Greek influence on Mesopotamia, *ibidem*, p. 26-32.

[5] The only early legal source in Syriac is the *Didascalia*, a third century Greek composition which was preserved fully in Syriac. It was edited and translated by A. VÖÖBUS, *The Didascalia Apostolorum in Syriac* (*Corpus Scriptorum Christianorum Orientalium*, 401-402, 407-408; *Scriptores Syri*, 175-176, 179-180), Louvain, 1979.

[6] On the transfer from civil matrimonial law to religious matrimonial law, see W. RORDORF, *Marriage in the New Testament and in the Early Church*, in *Journal of Ecclesiastical History*, 20 (1969), p. 208-210; P. ARIÈS, *The Indissoluble Marriage*, in P. ARIÈS – A. BÉJIN (ed.), *Western Sexuality: Practice and Precept in Past and Present Times*, Oxford, 1985, p. 140-157; J.A. BRUNDAGE, *Law, Sex, and Christian Society in Medieval Europe*, Chicago, 1987 p. 87-89; J. WITTE, *From Sacrament to Contract: Marriage, Religion and Law in the Western Tradition*, Louisville, 1997 p. 16-30; G.S. NATHAN, *The Family in Late Antiquity: The Rise of Christianity and the Endurance of Tradition*, London – New York, 2000; P.L. REYNOLDS, *Marriage in the Western Church: The Christianization of Marriage during the Patristic and Early Medieval Periods*, Boston, 2001, introduction, p. xiii-xxx (= REYNOLDS, *Marriage*); D.A. CRANE, *A "Judeo-Christian" Argument for Privatizing Marriage*, in *Cardozo Law Review*, 27 (2006), p. 1221-1259.

in most parts of the Roman Empire, marriage was still under the jurisdiction of Roman law, although on certain issues, such as divorce and remarriage, the church had some different rulings for its members.

Betrothal, according to the *Syro-Roman Lawbook*, and similar to other Roman legal sources[7], is a promise for future marriage. As such, withdrawal from the agreement is not considered to be divorce. Nevertheless, like any other promise, it requires guarantees, in order to ensure its fulfillment or sanction its breaking. In two sequential paragraphs discussing the withdrawal from betrothal, the *Syro-Roman Lawbook* mentions two customs which are aimed at securing future marriage:

ܐܢ ܡܛܠ ܐܠܗܐ ܐ̈ܢܫܝܢ ܠܕܚܬ݂ܐ ܐܝܢܐ ܕܥܬܝܕ ܠܐ ܗܘܬ݂ܐ ܐܢ݂ܬ݂ܬ݂ܐ ܐܘ ܡܛܠܗ ܐܘ ܡܛܠܗ
ܐܘ ܐܢܫܝܢ ܕܡܛܠ ܐܠܠܝ ܗܢ ܐܘ ܐܢܫܝܢ ܕܚܬ݂ܐ ܗܘ.
ܘܠܐ ܗܘܬ݂ܐ ܡܬ݂ܩܒܠܢܐ ܕܢ ܐܝܟܐ ܕ ܚ̈ܬ݂ܐ ܐܝܠܝܢ ܕܢܣܒ ܗܘ ܕܝܠܗ.
ܐܢ ܗܟܢܐ ܐܘ ܕܢ ܐܝܢܐ ܕ ܚ̈ܝܝܐ ܕ ܐܝܢܐ ܐܘ ܐܠܠܝ ܗ ܡܛܠ ܕܡܛܠ.
ܐܘ ܕܢ ܐܝܟܐ ܐܘ ܕܢ ܗ ܗܠܝ ܘܡܦܢܬ݂ܐ ܠܗ.

ܐܢ ܗܘܐ ܕܝ̈ܢ ܟܠܗܘܢ ܚ̈ܝܝܐ ܐܝܕ̈ܐ ܘܚܢܝܢ ܚ̈ܝܝܐ ܐܠܠܝ ܦܠܚ ܘܡܬ݂ܐܡܪ
ܘܡܛܠܗ ܘ ܐܝܟܐ ܐܘ ܐܘ ܚ̈ܝܝܐ ܕ ܐܗܢܐ ܐܘ ܐܠܗܐ, ܕܘܐܦ
ܠܐ̈ܝܢܐ, ܚ̈ܝܝܐ ܐܗ̈ܝ ܕܚܬ݂ܐ. ܘܐܢ ܟܝܠ ܟܠ ܐܝܟ̈ܐ. ܠܐ̈ܝܢܝܗܘܢ,
ܟܠܝ ܘܡܦܢܬ݂ܐ ܠܗ ܚ̈ܝܝܐ.

ܐܢ ܗܟܝܠ ܟܠ ܟܠ ܐܝܟ̈ܐ ܕܡܦܢܬ݂ܐ. ܐܝܟ̈ܐ ܗ, ܠܐ
ܕ ܚ̈ܝܝܐ. ܘܚܠ ܡܛܠ ܕ̈ܐܝܕ̈ܐ ܠܐ ܡ ܚ̈ܝܝܐ ܗܘܕ ܐܠܗܐ̈ܝ, ܠܐ ܚ̈ܝܒ.
ܐܢ ܕܝ̈ܢ ܘ̈ܡܬ݂ܐ ܚ̈ܠܝܗܘܢ ܡܚܬ݂ܐ ܠܐܠܠܝܐ ܗ̈ܝ ܕܙܝܢ ܟܝܕ ܐܠܗܐ̈ܝ,
ܟܝܕ ܐܝܟ̈ܐ. ܠܟ ܐܢ ܗ̈ܝ ܗܘ ܠܐ ܗܘܐ ܐܠܠܝ ܚ̈ܝܝܐ ܠܐ ܘ̈ܡ
ܐܘ ܐ̈ܗ ܠܐ ܕ ܘܡܚܬ݂ܐ ܕ. ܚܠ ܐܡܪ ܘܢܣܒ ܠܐ ܐܘ ܐ̈ܗ ܗ
ܐܝܟ̈ܐ, ܐܢ ܚ̈ܝܝܐ ܐܬ݂ܐ ܦܩܦ ܗ̈ܝ ܠܐ ܡܢ ܐܝܟ̈ܝ ܗܦ ܐܝܟ̈ܐ ܡ ܐ̈ܗ̈ܒ
ܘܩ̈ܒ݂ܐ.[8]

ܐܢ ܢܡܟܘܪ ܐܢܬܬܐ ܠܓܒܪܐ ܒܝܢܬ ܐܢܬܬܐ ܐܘ ܗܝ ܩܢܘܡܗ ܐܘ ܐܢܫܝܢ ܡܢ ܗܝ
ܐܝܢܐ ܕܡܢܬܗ ܩܒܠܬ ܠܗ ܐܝܟ ܕܒܩܢܝܢܐ ܐܘ ܐܦ ܡܢ
ܐܚܐ ܕܝܠܗ ܐܘ ܡܢ ܐܝܠܝܢ ܕܩܪܝܒܝܢ ܠܗ ܒܓܢܣܐ ܘܒܫܪܒܬܐ.

If a woman promises a man to be his wife among women, and her family
or the girl herself receives a ring[10] – her betrothal earnest – or a golden
ornament and gifts[11] of other things, and the one who made the proposal to
marry her dies, if the girl or her family are asked by his family [to return]
what she received, either by his brothers or by those close to him [there are
two options]:

If the girl had a bridal chamber, and the man to whom she is betrothed saw
her and kissed her, half of what she received, the earnest or goods from the
man to whom she is betrothed or from his family, she should return to the
family of her dead betrothed, and if he has no family, to his relatives, those
close to him by clan ties.

If he does not have relatives or those related to him by clan ties, the
woman to whom he is betrothed is close[st] to him, and everything she
has from the man to whom she is betrothed and from his family is given
to her.

J.A. ANKUM – R. FEENSTRA – W.F. LEEMANS (ed.), *Symbolae iuridicae et historicae
Martino David dedicatae*, Leiden, 1968, p. 50. It is cited here according to Selb and
Kaufhold's edition, with their minor corrections.

[9] *Syro-Roman Lawbook* 85 (SELB – KAUFHOLD, *Syrisch-römische Rechtsbuch*, II,
p. 106-107). This text does not appear in version L, the version which Selb and Kaufhold
defined as closer to the original *Syro-Roman Lawbook*. It appears only in version B, which
is based on later interpretations. For discussion on the different versions, see *ibidem*, I,
p. 68 ff.

[10] Evidence for giving a ring as part of betrothal could be found starting in the first
century CE. For discussion regarding the use of a ring in various contracts and its relations
to the ring used in a betrothal contract, see L. ANNÉ, *Les rites des fiançailles et la dona-
tion pour cause de mariage sous le Bas-Empire* (*Dissertationes ad gradum magistri in
Facultate theologica vel in Facultate juris canonici consequendum conscriptae / Univer-
sitas Catholica Lovaniensis*), Louvain, 1941, p. 5-62 (= ANNÉ, *Rites*); TREGGIARI, *Roman
Marriage*, p. 148-149. The ring is also mentioned in Jewish sources both as a pledge and
as a seal, see B. LIFSHITZ, סיטומתא – בין קנין לבין קנין לבין התחייבות, in M. CORINALDI – M.D. HERR –
R. ORWITZ et al. (ed.), *Studies in Memory of Professor Ze'ev Falk*, Jerusalem, 2005,
p. 59-69.

[11] A similar word, סבלונות, is used in the Talmudic discussion on returning gifts the
groom gave his bride during the betrothal. However, these gifts do not fortify the betrothal
and are not seen as pledges securing future marriage, see note 84.

If the man betrothed the girl only through his family or through others, but the girl did not have a bridal chamber, and her betrothed did not see whom he has betrothed, and did not kiss her, everything he or his family has given her, if she dies, he takes back from her family, except food and drink.

If a man betroths a woman from her family or from her relatives or from a person related to the woman, and he gives an earnest, a ring or other golden ornament or dinars formed with the imprint of the king, and the man who betrothed her does not want to take her as a wife, he loses his earnest and everything he has brought her as his betrothed.

If the family of the girl wishes to cancel the betrothal and does not hand over the girl to the man to whom she is betrothed, they double the earnest they received in the first day, and the remainder of what they received after the first day, gifts given to the girl by her betrothed [are returned] as they are, everything, but what they received on the first day which will be returned double[12].

Two legal concepts guide these rulings. The first is a kiss and the second is an earnest, a down-payment, a ܪ̈ܗܒܘܢܐ (*rāhbunō*). Both the kiss and the earnest are given during the betrothal period. The process of betrothal, according to this text, consists of three stages, the initial promise to marry[13], the kiss given after this promise as part of a betrothal ceremony,

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[12] For similar rulings, see *Sententiae Syriacae* 102, p. 66-67, 187-188. Cf. *Timotheos* 73 (Sachau, *Syrische Rechtsbücher*, II, p. 106-107) who rules similarly, but discusses ܡܗܪܐ rather than ܪ̈ܗܒܘܢܐ and a meeting rather than a kiss; *Timotheos* 120 (*ibidem*, p. 172-173) who discusses ܐܪܒܘܢܐ, presents; *Jesubocht* 3.2.1 (*ibidem*, III, p. 78-79) who mentions a ܫܠܡܘ, agreement, and a ring as initiating betrothal, but does not discuss its return.

[13] ܡܫܬܘܕܝܐ – (a woman) promises, according to L. Other manuscripts use the root ܫܕܠ, 'to entice' (RII), ܫܘܐ, 'to propose or negotiate marriage' (D, M, P), or ܩܒܠ, 'to accept, consent' (RI, G), all different than the usual root to describe betrothal in Syriac, ܡܗܪ, thus indicating this is an earlier and less committing stage of the betrothal process. The root ܡܗܪ is used throughout the paragraph by C, a work citing the *Syro-Roman Lawbook* with changes, see Selb – Kaufhold, *Syrisch-römische Rechtsbuch*, I, p. 153; *ibidem*, III, p. 328-329. For the definition of the root ܡܗܪ in Syriac, see J. Dauvillier – C. de Clercq, *Le mariage en droit canonique oriental*, Paris, 1936, p. 61-63; W. Selb, *Orientalisches Kirchenrecht*, I (Veröffentlichungen der Kommission für Antike Rechtsgeschichte, 3.6), Vienna, 1981, p. 151 note 396; M. Sokoloff, *A Syriac Lexicon: A Translation from the Latin, Correction, Expansion, and Update of C. Brockelmann's Lexicon Syriacum*, Winona Lake, Ind. – Piscataway, NJ, 2009, p. 761 ܡܗܪ (= *SL*); Y. Monnickendam, *Articulating Marriage: Ephrem's Legal Terminology and its Origins*, in *Journal of Semitic Studies* (forthcoming) (= Monnickendam, *Articulating*). The initial meaning or the root ܫܘܐ is 'to be at ease, quiet', as it appears in Qumran and Palestinian Aramaic, see D. Dimant, *4Q386ii-iii A Prophecy on Hellenistic Kingdoms?*, in *Revue de Qumran*, 18 (1998), p. 517-558; M. Sokoloff, *A Dictionary of Jewish Palestinian Aramaic of the Byzantine Period*, 2 ed., Ramat Gan, 2002, p. 538 שד״כ (= *DJPA*). In Hebrew, Babylonian Aramaic and Syriac it means 'to negotiate betrothal' as well, see Idem, *A Dictionary of Jewish Babylonian Aramaic of the Talmudic and Geonic Periods*, 2 ed., Ramat Gan, 2002, p. 1112, שד״כ (= *DJBA*); *SL*, p. 1513 ܫܘܐ; B. Lifshitz, *Law and Action: Terminology of Obligation and Acquistion in Jewish Law*, Jerusalem, 2001,

and the wedding. Each stage signifies a different level of commitment. At any given time throughout the process, starting from the initial promise and continuing until the wedding itself, the groom may have given his future bride the earnest, the ܪܗܒܘܢܐ (*rāhbunō*), in order to ensure the future marriage. The question discussed in these two rulings is "what happens to the ܪܗܒܘܢܐ (*rāhbunō*) if the people involved do not marry?"

Two cases are mentioned as reasons for cancelling the marriage: death and change of mind. The first ruling, discussing death of either the bride or the groom, emphasizes the importance of the kiss in determining the level of commitment. The second ruling, discussing change of mind, either of the groom or the bride's family, determines the financial consequences of this commitment. It presents the betrothal earnest, the ܪܗܒܘܢܐ (*rāhbunō*) as being similar to any other earnest, leading to financial loss if the agreement is not fulfilled.

In the first case, either the future groom or the potential bride dies prior to marriage. If either one dies after the kiss, the ܪܗܒܘܢܐ (*rāhbunō*) is divided in two, half returns to the groom or his heirs, and half remains with the bride or her heirs. However, if either spouse dies before the kiss, the ܪܗܒܘܢܐ (*rāhbunō*) returns in full to the groom or his heirs. In the second case if either side withdraws from the betrothal, the person who withdrew bears the loss of the ܪܗܒܘܢܐ (*rāhbunō*). If the groom withdraws from the betrothal he loses the ܪܗܒܘܢܐ (*rāhbunō*), while if the bride's family withdraws from the betrothal they must return it twofold. This last ruling is similar to discussions on earnest money given in other circumstances according to the *Syro-Roman Lawbook*: earnest money should be returned twofold if those receiving it are the ones cancelling the agreement[14]. The definition of the ܪܗܒܘܢܐ (*rāhbunō*) is also stressed by its comparison to any other gifts given after the ܪܗܒܘܢܐ (*rāhbunō*). Contrary to the ܪܗܒܘܢܐ (*rāhbunō*), these gifts are not to be doubled or lost in case of withdrawal from betrothal, but returned as they were given.

Both the kiss and the ܪܗܒܘܢܐ (*rāhbunō*) are critical parts of the betrothal and carry a financial burden in case of withdrawal from it. More importantly, both appear separately in earlier sources. Tracking down the roots of these customs will shed light on western influences on Syriac Christianity.

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p. 234-235 (Hebrew); A. ASHUR, *Engagement and Betrothal Documents from the Cairo Geniza* (*PhD Dissertation, Tel-Aviv University*), Tel Aviv, 2006, p. 17-18 (Hebrew) (= ASHUR, *Engagement*).

[14] *Syro-Roman Lawbook* 46 (SELB – KAUFHOLD, *Syrisch-römische Rechtsbuch*, II, p. 68-69). See, too: *Syro-Roman Lawbook* 34 (*ibidem*, p. 56-59).

1. *The Kiss*

According to the *Syro-Roman Lawbook*, a ceremonial kiss between a potential bride and her future groom determines the level of obligation for future marriage, by adding financial penalty to withdrawal from the betrothal. Such a kiss is well documented in Roman legal sources, as well as known from Christian Latin sources.

The earliest Latin writer to mention a kiss as part of the betrothal process was Tertullian, in the beginning of the third century[15]. He claimed that virgins "have associated with a male by a kiss and [the joining of] their right hands… through the common pledge (*pignus*) of awareness, by which they have fixed the entire union"[16]. Thus, Tertullian links the kiss to a pledge given with regard to the future marriage and claims that the kiss is part of the matrimonial process.

This custom is made even clearer in the writings of Ambrose of Milan[17]. In 388 CE, in a letter to his sister, Ambrose claimed that the church alone is betrothed to Jesus, rather than the Jews. The proof for that is the kisses between Jesus and the church: "It follows that the church alone has kisses (*oscula*), like a betrothed woman. For the kiss is pledge (*pignus*) of marriage, the privilege of wedlock"[18].

This custom, a kiss as a pledge for future marriage, also appears in Roman legal sources dating from as early as 332 CE[19]. In a letter sent

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[15] The dating of *De virginibus velandis* ranges between 202-213 CE; *De oratione* was written earlier, possibly as early as 198 CE. For a summary of scholarship on this question, see G.D. DUNN, *Rhetoric and Tertullian's De Virginibus Velandis*, in *Vigiliae Christianae*, 59 (2005), p. 25-29.

[16] Tertullian, *De oratione* 22.10, ed. and trans. E. EVANS, *Tertullian's Tract on the Prayer*, London, 1953, p. 32-33; *De virginibus velandis* 11.9, ed. and trans. E. SCHULZ-FLÜGEL – P. MATTEI (*Sources Chrétiennes*, 424), Paris, 1997, p. 168. These sources were first discussed by BRUNS – SACHAU, *Syrisch-römisches Rechtsbuch*, p. 261; and later by H. LECLERCQ, art. *Mariage*, in F. CABROL – H. LECLERCQ (ed.), *Dictionnaire d'archéologie chrétienne et de liturgie*, 10.2, Paris, 1907, p. 1893 (= LECLERCQ, *Mariage*); ANNÉ, *Rites*, p. 63-69; TREGGIARI, *Roman Marriage*, p. 150-151; REYNOLDS, *Marriage*, p. 319-320.

[17] For the latest biography, see J.H.W.G. LIEBESCHUETZ, *Ambrose and John Chrysostom: Clerics between Desert and Empire*, Oxford, 2011, p. 57-63.

[18] Ambrose, *Epistulae* 1(41).18, ed. M. ZELZER (*Corpus Scriptorum Ecclesiasticorum Latinorum*, 82.2), Vienna, 1982, p. 155. Ambrose says similar things on the kiss between Jesus and the soul, see *De Isaac vel anima*, 3.8, ed. K. SCHENKEL (*Corpus Scriptorum Ecclesiasticorum Latinorum*, 32.1), Vienna, 1897, p. 648; *Expositio psalmi* 118.16, ed. M. PETSCHENIG (*Corpus Scriptorum Ecclesiasticorum Latinorum*, 62.5), Vienna, 1913, p. 16. These sources were first mentioned by LECLERCQ, *Mariage*, p. 1894 and later by ANNÉ, *Rites*, p. 69-70.

[19] For dating of this ruling, see T.D. BARNES, *The New Empire of Diocletian and Constantine*, Cambridge, Ma., 1982, p. 145 note 17, who claimed this ruling may have

to Tiberianus of Spain, Constantine anchored the financial implications borne by such a kiss:

> If a man should make gifts to his betrothed, when a kiss has been exchanged as a pledge (*interveniente osculo*), and if it should happen that either the man or the woman should die before the marriage, we order that one half of the things given shall belong to the survivor; the other half shall belong to the heirs of the deceased man or woman, of whatever degree such heirs may be and by whatever right they may succeed to the inheritance, so that it appears that one half of the gift shall remain valid and one half shall be canceled. But when no kiss has been exchanged as a pledge, if either of the betrothed persons should die, the whole gift shall be invalidated and shall be restored to the betrothed donor or to his heirs[20].

According to Constantine, a kiss of a betrothed couple carries financial consequences and by that strengthens the betrothal obligations. Similar to the ruling in the *Syro-Roman Lawbook*[21], if the potential bride or the groom dies after the kiss but prior to the wedding, the value of gifts received during the betrothal should be divided: one half to the survivor and the other to the deceased's inheritors. In the case of death prior to the kiss, the gifts are returned as they were given.

The kiss here seems to conclude the formal agreement. It is a symbolic act with obligating consequences, similar to that of a handshake, but one which acts as a guarantee obligating both sides to fulfill their promises. Unlike the *Syro-Roman Lawbook*, the kiss itself, rather than the gifts, secures the betrothal and creates financial and matrimonial obligations. The gifts are termed *donations*, a word that does not indicate a surety in any way but is based on good will. The kiss, however, is described as an assurance for the expected marriage: *interveniente osculo* – 'a kiss has been given as a pledge'[22]. Although this pledge is not a physical surety like other pledges, it is an act with financial implications. These losses may prevent one from withdrawing from betrothal.

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been issued in July 332 CE; cf. O. Seeck, *Regesten der Kaiser und Päpste für die Jahre 311 bis 476 n. Chr.*, Stuttgart, 1919 p. 183, 428, who dated this ruling at July 15, 335 CE.

[20] *Theodosian Code* 3.5.6; *Justinian Code* 5.3.16.

[21] For full discussion on the relationship between the *Syro-Roman Lawbook*, the *Theodosian Code* 3.5.6 and its *Interpretation*, see W. Selb, *Zur Bedeutung des syrisch-römischen Rechtsbuches* (*Münchener Beiträge zur Papyrusforschung und antiken Rechts-geschichte*, 49), München, 1964, p. 98-104; Selb – Kaufhold, *Syrisch-römische Rechts-buch*, III, p. 165-170; cf. Bruns – Sachau, *Syrisch-römisches Rechtsbuch*, p. 259-264; Anné, *Rites*, p. 74-78.

[22] For this meaning of the verb *intervenio*, see: *Digest* 15.1.3.5 and the discussion of M.B. Pharr, *The Kiss in Roman Law*, in *Classical Journal*, 42 (1947), p. 395 (= Pharr, *Kiss*); Evans-Grubbs, *Law and Family*, p. 171.

These sources, together with the absence of early sources from the eastern parts of the Roman Empire, led scholars to the conclusion that this practice was known only in the western parts of the Roman Empire, North Africa of Tertullian, Milan of Ambrose and Spain of Constantine[23]. Its appearance in the fifth century in the *Syro-Roman Lawbook*, and especially the resemblance to a ruling from the *Theodosian Code*, should therefore be a result of Roman influence, rather than a reflection of a custom practiced in the eastern parts of the Roman Empire.

However, new sources show that Tertullian was not the only Christian writer who mentioned this custom in the third century. Only three decades later, between the years 239-242 CE, in Palestine, Origen mentioned the importance of such a kiss[24]. Commenting on the second verse of the Song of Songs, he writes: '"Let him kiss me with the kisses of his mouth" (Song. 1:2): let him betroth me not by the prophets'[25]. The beloved, the church, demands to be betrothed to Jesus by his own kisses, rather than by his messengers[26]. Origen articulates this demand by interpreting "Let him kiss me" – "Let him betroth me", thus revealing that in his eyes a kiss is part of the betrothal. This custom appears again a century later.

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[23] For discussion on the kiss in Roman law, and similar conclusions, see ANNÉ, *Rites*, p. 63-73; N.T. STEINLAUF, *The Kiss in Roman Law*, in *Classical Journal*, 41 (1945), p. 24, 37; PHARR, *Kiss*, p. 394-396; TREGGIARI, *Roman Marriage*, p. 151-152; EVANS-GRUBBS, *Law and Family*, p. 170-171; EADEM, *Marrying and its Documentation in Later Roman Law*, in P.L. REYNOLDS – J. WITTE (ed.), *To Have and to Hold: Marrying and Its Documentation in Western Christendom, 400-1600*, Cambridge – New York, 2007, p. 67-68 (= EVANS-GRUBBS, *Documentation*).

[24] Origen wrote a commentary and homilies on the Song of Songs. Unfortunately, only fragments from the commentary were preserved in Greek, in Procopius' catena from the sixth century, which is cited above. Significant parts of the commentary and two homilies were translated into Latin by Rufinus and Jerome respectively. For the latest discussion on these compositions and their dating, see E.A. CLARK, *Origen, the Jews and the Song of Songs: Allegory and Polemic in Christian Antiquity*, in A.C. HAGEDORN (ed.), *Perspectives on the Song of Songs; Perspektiven der Hoheliedauslegung*, Berlin – New York, 2005, p. 278-280. Similar to the cited fragment, in his commentary and homily Origen explains the kisses as a demand of the bride to be kissed by Jesus rather than his messengers. However, kissing is not explained as betrothal, see *Commentary on the Song of Songs* 1.7, ed. and trans. L. BRÉSARD – H. CROUZEL (*Sources Chrétiennes*, 375-376), Paris, 1991, p. 180 (= BRÉSARD – CROUZEL), and in his *Homilies on the Song of Songs* 1.2, ed. and trans. O. ROUSSEAU (*Sources Chrétiennes*, 37), Paris, 1954, p. 63.

[25] *Φιλησάτω* με ἀπὸ φιλημάτων στόματος αὐτοῦ. Μὴ διὰ προφητῶν με **μνηστευσάτω**. Origen, *Scholia on the Song of Songs* (*PG* 17, p. 253). This exegesis is followed by (Ps.) John Chrysostom, *Homily on the Turtle-dove* 2 (*PG* 55, p. 600).

[26] Reading the Song of Songs as an allegory of the relationship between God and his people appears both in Jewish and Christian exegesis. For the latest discussion on the comparison between Origen and rabbinic commentary, and a survey of research, see T. KADARI, *Rabbinic and Christian Models of Interaction on the Song of Songs*, in M. POORTHUIS – J. SCHWARTZ – J. TURNER (ed.), *Interaction between Judaism and Christianity in History, Religion, Art and Literature*, Leiden – Boston, 2009, p. 65-82.

In 347 CE[27], Cyril of Jerusalem[28] used this legal concept as an analogy to 'betrothing' forgiveness[29].

The kiss is known not only to Greek writers of the third and fourth century, but also to Syriac writers. Ephrem (306-373 CE), one of the earliest Syriac Christian writer known to us by name, mentions this custom in his *Commentary on Genesis*. According to Genesis 29, Jacob, having left Beersheba, arrived at a well in a field. There he met the local shepherds and caught sight of Rachel, the daughter of Laban, his mother's brother. Seeing her, he removed the stone blocking the well and watered the entire flock. He then kissed Rachel and was invited to Laban's home, where he later agreed to work for seven years in exchange for marrying her[30].

Ephrem, commenting on this story, asserts that Rachel was betrothed to Jacob even before any actual agreement appearing in the biblical story. For Ephrem, it was their meeting by the well that marked their betrothal:

ܐܙܠ ܕܝܢ ܝܥܩܘܒ. ܘܣܛܐ ܠܗ ܥܠ ܒܐܪ. ܘܚܙܐ ܠܪܚܝܠ ܐܢܬܬ ܪܥܝܐ. ܕܚܦܝܐ
ܘܣܘܚܚܠܬܐ. ܘܒܐܦܝܗ̇ ܕܐܘܟܡܢ ܚܢܘܬܗ ܡܢ. ܕܕܡ ܓܝܪ ܐܝܟ
ܨܠ̈ܝܬܐ ܘܢܦ̈ܩ ܓܝܪ ܢܐ ܐܝܟ ܠܐ ܦܪܝܟܐ ܗܘܐ. ܐܒܪܐ ܠܗ. ܘܗܘ ܕܝܢ ܝܕܥ
ܕܗܢܐ ܠܪܒܩܐ ܫܦܝܪܬܐ ܥܠ ܚܢܘܬܐ. ܗܘ ܠܗ ܠܪܚܝܠ ܒܣܚ̈ܝܗ̇ ܗܘܐ
ܥܠ ܒܐܪ. ܟܕ ܕܝܢ ܢܥܒܕ ܡܪܚܡܢܘܬܗ. ܘܓܐܠ ܚܕ ܟܐܦܐ ܕܣܓܝ̈ܐܐ ܗܘܐ
ܗܘܐ. ܠܟܐܦܐ ܕܥܦ̈ܝܬܐ ܠܗܘܢ ܚܢܘܢ ܗܘܘ ܠܗ̇. ܘܟܕ ܡܟܪܗ̇
ܠܐܠܗܐ ܒܝܕ ܬܕܡܘܪܬܐ. ܗܦܟ ܓܝܪ ܘܡܟܪܗ̇ ܠܗ ܒܝܕ ܢܘܫܩܬܐ.

Jacob continued on and turned aside to a well, and saw Rachel, the shepherd girl, being barefoot and simply dressed, with face burned from the sun, who could not be distinguished from blackened brands that come out of the fire. [Jacob] knew that he who had presented the beautiful Rebekah at the spring, he now presents Rachel, with her simple clothes at the well. Then he performed a heroic deed in front of her, when by the son hidden in him, he rolled the stone that many only with difficulty could raise[31]. And when he betrothed [Rachel] to God through a marvelous deed, he turned and betrothed her to himself with a kiss[32].

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[27] For the life and work of Cyril, see H.J.W. DRIJVERS, *Cyril of Jerusalem, Bishop and City* (*Supplements to Vigiliae Christianae*, 72), Leiden – Boston, 2004, p. 31-63 and note 1.

[28] Cyril of Jerusalem, *Mystagogical Orations* 5.3, ed. and trans. A. PIÉDAGNEL – P. PARIS (*Sources Chrétiennes*, 126), Paris, 1966, p. 148-149.

[29] John Chrysostom, *Eutropius* 2.13 (*PG* 52, p. 408), may also refer to this custom, when discussing the resurrection. However, he uses the verb φίλει which could mean both 'to love' and 'to kiss'. For further discussion, see ANNÉ, *Rites*, p. 69-71.

[30] Gen. 29:18.

[31] Cf. *Genesis Rabba* 70.12, ed. J. THEODOR – Ch. ALBECK, *Bereshit Rabba mit Kritischen Apparat und Kommentar*, 2 ed., Jerusalem, 1965, p. 811 (= THEODOR – ALBECK).

[32] Ephrem, *Genesis* 27.1, ed. R. TONNEAU, *Sancti Ephraem Syri In Genesim et in Exodum commentarii* (*Corpus Scriptorum Christianorum Orientalium*, 152; *Scriptores Syri*, 71), Louvain, 1955, p. 89.

Ephrem stresses Rachel's rude appearance, apparently to rule out any notion that he might have been attracted to her because she 'was shapely and beautiful'[33]. Here, despite her 'face burned from the sun' he betroths her at once, having first turned her to the true faith by performing a miraculous deed 'by the son hidden in him', i.e. by the powers of Jesus in him. According to Ephrem, Jacob did not wait for Laban to agree to their marriage, as implied by the original biblical narrative, but immediately betrothed Rachel by the well, with a kiss[34].

To sum up, the custom of a kiss between a potential bride and her groom in order to complete the betrothal is mentioned in the *Syro-Roman Lawbook*. There, it is aimed at strengthening the status of betrothal by imposing financial punishments in the case of annulment, similar to its role in Latin legal and patristic sources. Nevertheless, this kiss is also found in early eastern sources such as the Greek and Syriac Christian literature, especially in Ephrem the Syrian. Ephrem

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[33] Gen. 29:17.

[34] According to the *Diatessaron*, 3.17, ed. L. LELOIR, *Commentaire de l'évangile concordant: texte syriaque (Manuscrit Chester Beatty 709), folios additionnels* (*Chester Beatty Monographs*, 8), Leuven – Paris, 1990, p. 20, Rachel, Rebekah and Zipporah were betrothed next to water, but not necessarily by a kiss. Lange claimed that this paragraph is of questionable authority, and was probably added to the *Diatessaron* by a later writer, see C. LANGE, *The Portrayal of Christ in the Syriac Commentary on the Diatessaron* (*Corpus Scriptorum Christianorum Orientalium*, 616; *Subsidia*, 118), Louvain, 2005, p. 59-60 (= LANGE, *Portrayal*); IDEM, *Ephraem der Syrer, Kommentar zum Diatessaron* (*Fontes Christiani*, 54), Turnhout, 2008, p. 68. Similarly, Gregory of Nyssa, Ephrem's contemporary, also implied that Jacob betrothed Rachel by the well. In *Diem Luminum* 9, ed. E. GEBHARDT, *Gregorii Nysseni Opera*, IX, Leiden, 1967, p. 231-232, Gregory describes the episode by the well: ὁ δὲ Ἰακὼβ μόνος ἀποκυλίει τὸν λίθον καὶ ποτίζει τῆς μνηστῆς τὰ πρόβατα – 'Jacob alone rolls away the stone and waters the flocks of his μνηστή'. Naming Rachel μνηστή, a betrothed, could indicate that according to Gregory, Rachel was betrothed by the well and not later. However, this is not necessary, since Gregory of Nyssa uses this verb also as 'to woo', for example, in *Life of Macrina* 2, ed. and trans. P. MARAVAL (*Sources Chrétiennes*, 178), Paris, 1971, p. 144; *ibidem* 4 (p. 152); *ibidem* 5 (p. 156); *Letters* 11.6, ed. IDEM (*Sources Chrétiennes*, 363), Paris, 1990, p. 188. See, too, G.W.H. LAMPE, *A Patristic Greek Lexicon*, Oxford – New York, 1961, p. 875 (= *PGL*). There are rabbinic traditions claiming that Jacob proposed to Rachel by the well, such as that cited in *b. Meg.* 13b and *b. B. Bat.* 123b, but they do not claim that he betrothed her there, nor that that cited in the kiss was a means of betrothal. The Palestinian midrash, and likewise the later Syriac *Commentary on Genesis*, treated this kiss as one between relatives: *Genesis Rabbah* 70:12 (THEODOR – ALBECK, p. 811); *Commentary on Genesis* 19, ed. L. VAN ROMPAY (*Corpus Scriptorum Christianorum Orientalium*, 483; *Scriptores Syri*, 205), Louvain, 1986, p. 98. The Syriac commentary attributes such kisses to the Romans. For discussion on the Rabbinic interpretations of this kiss, see: A. KOSMAN, *"Then Jacob Kissed Rachel…" (Genesis 29, 11) – The Commentary of the Sages and their Followers*, in *Beit-Mikra*, 149 (1997), p. 117-136 (Hebrew).

recognizes the legal significance of the kiss as part of the betrothal process, but contrary to the *Syro-Roman Lawbook*, the kiss does not only strengthen betrothal, it can actually establish it. According to Ephrem, the kiss itself betroths the woman to her future husband.

2. *The Earnest*

The second term mentioned in the rulings from the *Syro-Roman Lawbook* is the ܪܗܒܘܢܐ (*rāhbunō*), the earnest that a groom gives his future bride prior to marriage. This custom is not restricted to legal sources like the *Syro-Roman Lawbook*, but is documented in contemporary non-legal Syriac literature as well. For example, in *Febronia*, a Syriac saint's life from Nisibis of the late sixth century, a ܪܗܒܘܢܐ (*rāhbunō*) is something the groom gives his future bride prior to their marriage. It indicates that the couple is obligated to mutual loyalty[35]. Likewise, it is mentioned in a similar context in a Persian saint's life written in Syriac in the middle of the fifth century[36].

Searching for the origin of the betrothal earnest leads to ancient sources from the Near East, as well as contemporary Greco-Roman sources. The ancient Near Eastern sources are geographically closer to the *Syro-Roman Lawbook*. That, however, does not necessarily indicate that they were known to the composer of the *Syro-Roman Lawbook* through these channels, rather than the Greco-Roman channels. As Paul Kuschakar pointed out[37], the earliest evidence of a betrothal agreement in which an earnest is given as a security for future marriage is from ancient Babylon, the *Laws of Hammurabi* (ca. 1780 BCE)[38]. According to this Babylonian code, as well as other ancient codes[39], gifts a groom

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[35] *Febronia* 14, ed. P. BEDJAN, *Acta martyrum et sanctorum*, V, Paris – Leipzig, 1890, p. 585.

[36] *Anahid*, ed. P. BEDJAN, *Acta martyrum et sanctorum*, II, Paris – Leipzig, 1890, p. 590. Another documentation of this custom could be found in Greek Ephrem, *Sermo adversus haereticos*, ed. J.S. ASSEMANI, *Sancti Ephraem Syri opera omnia quae exstant Graece, Syriace, Latine*. Ser. 1, *Graece et Latine*, II, Rome, 1743, p. 277A.

[37] P. KOSCHAKER, *Zur Geschichte der Arrha Sponsalicia*, in *Zeitschrift der Savigny Stiftung für Rechtsgeschichte*, 33 (1912), p. 386-388; IDEM, *Rechtsvergleichende Studien zur Gesetzgebung Hammurapis*, Leipzig, 1917 p. 130-149; RITZER, *Mariage*, p. 68-69.

[38] *Hamurrabi Laws* 159-161, ed. and trans. G.R. DRIVER – J.C. MILES, *The Babylonian Laws*, 2 vol., Oxford, 1952 and 1955, II, p. 60-63. For commentary, see *ibidem*, I, p. 322-324; cf. *Hamurrabi Laws* 138, *ibidem*, II, p. 54-55, regarding divorce, in which the husband pays his wife an amount equal to the bridal gift.

[39] *Hittite Laws* 29-30, trans. M.T. ROTH, *Law Collections from Mesopotamia and Asia Minor* (*Writings from the Ancient World*, 6), 2 ed., Atlanta, GA, 1997, p. 221; *Laws of*

gives to his future wife prior to marriage are treated as earnest money and are seen as guarantees for marriage. One who cancels a marriage agreement after paying the bridal gifts has no claim on those gifts. Likewise, if the future bride or her family cancels the marriage, they must return the gifts twofold.

Despite the similarity between this ruling and the ruling from the *Syro-Roman Lawbook*, this similarity does not necessarily mean that the Syriac code is drawing directly from the Babylonian code. The *Laws of Hammurabi* were written more than two millennia before the *Syro-Roman Lawbook*. Therefore, any discussion on the sources of the *Syro-Roman Lawbook* should first turn to sources from late antiquity, since they are more likely to influence the *Syro-Roman Lawbook*. It is possible that even though the practice of granting a betrothal earnest is borrowed from Greco-Roman law, its roots are Babylonian[40]. Nevertheless, since evidence for this custom is absent from sources throughout the time between the *Laws of Hammurabi* and the first centuries CE, appearing only in late antiquity Roman literature, this assumption remains mere speculation[41].

Moreover, this same phenomenon is reflected not only in the historical study of the betrothal earnest, but also in the etymological study of the term ܪܗܒܘܢܐ (*rāhbunō*). This word is an example of a word that is rooted in Semitic languages, but its form is a result of borrowing from Greek or Latin. In Ugarit, *'rbn* means surety or guarantor[42]; in Old Assyrian and Akkadian, *erubbātum* or *erubātu* means

Eshnunna 25 (*ibidem*, p. 62-63); *Laws of Lipit-Ishtar* 29 (*ibidem*, p. 32). For discussion regarding bridal payments, see C. TSCHAERNOWITZ, נערה המאורשה, in המשפט העברי, 3 (1928), p. 22-23; E. NEUFELD, *The Hittite Laws: Translated into English and Hebrew with Commentary*, London, 1951, p. 143-144; R. YARON, *The Laws of Eshnunna*, Jerusalem – Leiden, 1988, p. 174-176, 190-199.

[40] For a similar opinion, see A. ARJAVA, *Women and Law in Late Antiquity*, Oxford, 1996, p. 55-56 and further bibliography in note 95.

[41] Earlier than the *Laws of Hammurabi*, the Bible also mentions gifts a husband gives his future wife prior to marriage. However, these gifts are not regarded as sureties. The biblical *mohar* (Gen. 34:12; Ex. 22:16-17; Deut. 22:29; Josh. 15:16-17; Jud. 1:12-13; 1 Sam. 18:25-27) is part of initiating the marital bond, rather than securing a future agreement. No discussion regarding its return in case the marriage did not take place can be found in biblical literature.

[42] G. DEL OLMO LETE – J. SANMARTÍN, *A Dictionary of the Ugaritic Language in the Alphabetic Tradition* (*Handbuch der Orientalistik, Erste Abteilung, Naher und der Mittlerer Osten*, 67), Leiden – Boston, 2004, p. 179-181 *'rb* (= *DUL*); J. AISTLEITNER, *Wörterbuch der ugaritischen Sprache* (*Berichte über die Verhandlungen der Sächsischen Akademie der Wissenschaften zu Leipzig: Philologisch-historische Klasse*, 106.3), Berlin, 1963, §2094 (= *WUS*); *DUL*, p. 181-182 *'rbn*.

pledge[43]; in biblical Hebrew עֵרָבוֹן (*ʽērāḇôn*) means pledge[44]; in official Aramaic the word ערבן (*ʽrbn*) means surety[45], just as the word עֵרְבוֹן

[43] *Assyrian Dictionary of the Oriental Institute of the University of Chicago*, E, Chicago, 1956-2010, p. 327 *erubātu* (= *CAD*); W. VON SODEN, *Akkadisches Handwör-terbuch*, Wiesbaden, 1965–1981, p. 248 *erubbātum* (= *AHW*); K.R. VEENHOF, *The Old Assyrian Period*, in R. WESTBROOK – R.L. JASNOW (ed.), *Security for Debt in Ancient Near Eastern Law*, Leiden, 2001, p. 126-128. I wish to thank Prof. Richard Jasnow for referring me to Veenhof's article.

[44] M.Z. KADDARI, *A Dictionary of Biblical Hebrew*, Ramat-Gan, 2006, p. 829 עֵרָבוֹן (= *DBH*); L. KOEHLER – W. BAUMGARTNER, *The Hebrew and Aramaic Lexicon of the Old Testament*, II, Leiden – Boston, 2001, p. 881 עֵרָבוֹן (= *HALOT*); Gen. 38:17, 18, 20. E.Y. KUTSCHER, *Words and Their History*, Jerusalem, 1965, p. 56 (= KUTSCHER, *Words*), claims that the word ערבן is not loaned from Akkadian but original Hebrew. The term עֵרָבוֹן appears only three times in the Old Testament, but two other terms describe a pledge: עבוט and חבל. While H.M. WEIL, *Gage et cautionnement dans la Bible*, in *Archives d'histoire du droit oriental*, 2 (1938), p. 171-241 (= WEIL, *Gage*), and later R. DE VAUX, *Das Alte Testament und seine Lebensordnungen*, I, Freiburg, 1964, p. 276-278, claimed they are identical to both עֵרָבוֹן and עֲרֻבָּה and all are given when the debt falls due, J. HOFTIJZER – W.H. VAN SOLDT, *Texts from Ugarit Concerning Security*, in *Ugarit-Forschungen*, 23 (1991), p. 211 (= HOFTIJZER – VAN SOLDT, *Security*), claimed that the עֵרָבוֹן is given when the payment is expected at the moment the contract is concluded, but is not available, whereas the others are cases in which the payment is not expected imme-diately. For other definitions of עֲרֻבָּה, see WEIL, *Gage*, p. 212-213; *DBH*, p. 828-829 עֲרֻבָּה; *HALOT* p. 880-881 עֲרֻבָּה; HOFTIJZER – VAN SOLDT, *Security*, p. 212-213. For the pattern, see T.N.D. METTINGER, *The Nominal Pattern "Qᵉtulla" in Biblical Hebrew*, in *Journal of Semitic Studies*, 16 (1971), p. 9. The word עֵרָבוֹן was replaced in Mishnaic Hebrew with the word משכן, see S. LERNER, *Elements of the Law of Pledges in Jewish Law* (*PhD Dissertation, Hebrew University*), Jerusalem, 1980, p. 2-4 (= LERNER, *Pledges*). For the legal definition of the משכן as a pledge that should be returned, see S. ALBECK, *The Law of Property and Contract in the Talmud*, Tel Aviv, 1976, p. 480-485 (= ALBECK, *Law*); LERNER, *Pledges*. The term עֵרָבוֹן was preserved, however, in Mishanic Hebrew, e.g. *m. Abot.* 3:16; *Abot. R. Nat.* Version A, 39, ed. S. SCHECHTER – M. KISTER, *Avoth de-Rabbi Nathan*, New York – Jerusalem, 1997, p. 116; *y. Seb.* 10:9, 39d, ed. J. SUSSMANN, *Talmud Yerushalmi According to Ms. Or. 4720 (Scal. 3) of the Leiden University with Restora-tions and Corrections*, Jerusalem, 2001, p. 216:23 (= *Hebrew Academy*); *Esther Rabbah* 7 (published in a synoptic edition: http://www.schechter.ac.il/pdf/%D7%96.pdf). For the relation between ערבן and exchange purchase, see B. LIFSHITZ, *Promise: Obligation and Acquisition in Jewish Law*, Jerusalem, 1988, p. 338-340 (Hebrew). The term ערבן is also used as 'earnest' or 'down-payment' in Amoraic literature: *y. Shab.* 18:3, 16c, ed. *Hebrew Academy*, p. 444:7; cf. *y. B. Mesia* 4:2, 9c, ed. *Hebrew Academy*, p. 1224:25-30, in which both definitions of the term ערבן are combined; *t. B. Mezia* 1:17, S. LIEBERMAN, *The Tosefta*, IV, New York – Jerusalem, 1988, p. 65 (= LIEBERMAN); *b. B. Mesia* 48b. For discussion, see ALBECK, *Law*, p. 170, 324-328, 373-375. Contrary to the Greek term, an ערבן does not consist of a financial penalty. The idea of returning double the amount of the ערבן is known to rabbinic law, but is rejected, as discussed by J. NEUBAUER, *The History of Marriage Laws in Bible and Talmud*, Jerusalem, 1999, p. 88-101 (Hebrew); cf. Z.W. FALK, *On Suretyship in Hebrew Law*, in *Les sûretés personnelles*, I (*Recueils de la Société Jean Bodin*, 28), Bruxelles, 1974, p. 223-231; S. FRIEDMAN, *Talmud Arukh: BT Bava Meẓiʿa VI, Commentary*, Jerusalem, 1990, p. 108-111, 121-123.

[45] C.-F. JEAN – J. HOFTIJZER, *Dictionnaire des inscriptions sémitiques de l'ouest*, Lei-den, 1965, p. 221; J. HOFTIJZER – K. JONGELING, *Dictionary of the North-West Semitic*

(*ʾārḇôn*)[46] in Palestinian Aramaic, the word ܥܪܒܘܢ (*ʾārḇôn*) in Christian Palestinian Aramaic[47], and the word עֶרְבוֹנָא (*ʾārḇônā*)[48] in Babylonian Aramaic[49]. Nevertheless, while the root ܥܪܒ (*ʾrb*) and most of its declensions are documented in Syriac referring to pledges and sureties[50], Syriac does not document a parallel form to the forms *ʾrbn/ʾārḇôn/ ārḇônā*.

A form of the word *ʾrbn/ʾārḇôn/ārḇônā*, whether through Phoenician[51] or through other languages, penetrated Greek in the form ἀρραβῶν, a 'pledge' or an 'earnest', 'down-payment'[52]. Through Greek, Latin

inscriptions, Leiden – New York, 1995, p. 886 *ʾrbn* (= *DNWSI*); A.E. COWLEY, *Aramaic Papyri of the Fifth Century B.C.*, Oxford, 1923, p. 29-32, Papyrus 10 (= COWLEY, *Papyri*); *ibidem*, Papyrus 35 according to B. PORTEN, *Fragmentary Aramaic Deeds of Obligation and Conveyance: New Collations and Restorations*, in *Journal of Near Eastern Studies*, 48 (1989), p. 166; COWLEY, *Papyri*, p. 141-144, Papyrus 42; E.G.H. KRAELING, *The Brooklyn Museum Aramaic papyri; New Documents of the Fifth Century B.C. from the Jewish Colony at Elephantine* (*Publications of the Department of Egyptian Art*), New Haven, 1953, p. 259-265, Papyrus 11 according to H.L. GINSBERG, *Notes on Some Old Aramaic Texts*, in *Journal of Near Eastern Studies*, 18 (1959), p. 148-149, R. YARON, *Notes on Aramaic Papyri*, II, in *Journal of Near Eastern Studies*, 20 (1961), p. 127-128, also published by B. PORTEN – J.C. GREENFIELD, *Jews of Elephantine and Arameans of Syene: Fifty Aramaic Texts with Hebrew and English Translations*, Jerusalem, 1974, p. 66-67.

[46] *DJPA*, p. 418 עֶרְבוֹן; *y. Qidd.* 2:1 62c, ed. *Hebrew Academy*, p. 1163:47.

[47] F. SCHULTHESS, *Lexicon Syropalaestinum*, Berlin, 1903, p. 152 ܥܪܒ (= *LSP*).

[48] *DJBA*, p. 880 ערבותא; ערבונא.

[49] The root *ʾrb* appears in most west Semitic languages. Its initial meaning is 'to enter' in Ugarit, Old Assyrian, Akkadian, Punic and Nabatean, see: *DUL* p. 179-80 *ʾrb*; *WUS*, §2094; *CAD*, p. 259 ff. *erēbu*; *AHW*, p. 234 ff. *erēbu*; *DNWSI* p. 884 *ʾrb₁*. The definition 'to give guarantee or pledge' developed from this definition. For discussion on the different Ugarit texts on security, see HOFTIJZER – VAN SOLDT, *Security*. The definition 'to stand surety for' is attested in Biblical Hebrew, as discussed by WEIL, *Gage*, p. 215-232; *DBH*, p. 827 ער״ב; *HALOT*, II, 2, p. 876-7 ער״ב. As in the other Semitic languages, the root ער״ב in Hebrew has multiple meanings. The *Historical Dictionary of the Hebrew Language* dedicated an issue of its journal, *Lesonénu*, 46 (1982), to this root, in all Hebrew dialects. For further discussions on the various meanings of this root, see KUTSCHER, *Words*, p. 83-86. The definition 'to stand surety for' is also the definition in Jewish and Christian Palestinian Aramaic and Jewish Babylonian Aramaic, see: *DJPA*, p. 417 ²ערב; *ibidem*, p. 879 ¹ערב; *LSP*, p. 152 ܥܪܒ.

[50] *SL*, p. 1133 ܥܪܒ. For further discussion on the various meanings of this root, see F. SCHULTHESS, *Homonyme Wurzeln im Syrischen, ein Beitrag zur semitischen Lexicographie*, Berlin, 1900, p. 46-50; *SL*, p. 1134 ܥܪܒܐ; ܥܪܒܐ; ܥܪܒܘܬܐ.

[51] KUTSCHER, *Words*, p. 56; E. LIPIŃSKI, עָרַב, in G.J. BOTTERWECK – H. RINGGREN (ed.), *Theological Dictionary of the Old Testament*, IX, Grand Rapids, 2001, p. 328 (= *TDNT*); H.G. LIDDELL – R. SCOTT – H.S. JONES, *A Greek English Lexicon*, Oxford, 1996, p. 246 ἀρραβῶν (= *LSJ*). For its form, see J. BARTH, *Die Nominalbildung in den semitischen Sprachen*, Leipzig, 1894, p. 324; H. BAUER – P. LEANDER, *Historische Grammatik der hebräischen Sprache des alten Testamentes*, Hildesheim, 1965, p. 498; A. HURVITZ, *Akkaron = Amqar(r)una = עקרון*, in *Lesonénu*, 33 (1968-1969), p. 23.

[52] For the distinction between 'pledge' and 'earnest' or 'down-payment', see A.J. KERR, *Notes and Studies: APPABΩN*, in *Journal of Theological Studies*, 39 (1988), p. 92-94

adopted the term in the form *arrha* (or *arra*) a 'pledge' or an 'earnest',
'down-payment'[53]. This borrowing, however, was not the last stop on the
journey of this word. Rather, it 'made a come-back into Semitic'[54], and

(= KERR, *APPABΩN*). For further discussion on the original meaning of the Greek term
and its development, see F. PRINGSHEIM, *The Greek Law of Sale*, Weimar, 1950, p. 342-
356 (= PRINGSHEIM, *Greek Law*); J.P. BROWN, *Literary Contexts of the Common Hebrew-
Greek Vocabulary*, in *Journal of Semitic Studies*, 13 (1968), p. 174-178; K. ERLEMANN,
Der Geist als arrabōn (2Kor 5,5) im Kontext der Paulinischen Eschatologie, in *Zeitschrift
für die neutestamentliche Wissenschaft und die Kunde der älteren Kirche*, 83 (1992),
p. 203-209. For the earliest sources using the term ἀρραβῶν according to the definition
'pledge', see: Aristotle, *Politics* 1259a, in a description of Thales' financial actions. This
source is also cited in H. DIELS – W. KRANZ, *Die Fragmente der Vorsokratiker*, I, Berlin,
1954, p. 76. A similar meaning appears in the early fourth century BCE, in Isaeus, *Ciron*
8.23. For the definition 'down-payment', see Antiphanes frg. 123, in J.M. EDMONDS, *The
Fragments of Attic Comedy after Meineke, Bergk, and Kock*, II and IIIb, Leiden, 1957 and
1961, II, p. 218-219; Menander, frg. 697, *ibidem*, IIIb, p. 826-827; Menander, frg. 743,
ibidem, IIIb, p. 836-837, and the discussion of B. AHERN, *The Indwelling Spirit, Pledge of
Our Inheritance*, in *Catholic Biblical Quarterly*, 9 (1947), p. 181-183 (= AHERN, *Indwelling
Spirit*); E. MASSON, *Recherches sur les plus anciens emprunts sémitiques en grec* (*Études
et commentaires*, 67), Paris, 1967, p. 30-31. In the Old Testament, ἀρραβῶν refers
to 'pledge' translating the Hebrew עֵרָבוֹן, see Gen. 38:17-20; PRINGSHEIM, *Greek Law*,
p. 335-336. Greek commentary of this story follows the wording of the Septuagint and
uses the word ἀρραβῶν, for example: *Testament of Judah* 12.5, ed. M. DE JONGE, *The
Testaments of the Twelve Patriarchs* (*Pseudepigrapha Veteris Testamenti Graece*, 1),
Leiden, 1978, p. 63; Philo, *De fuga* 149-151. This is also the definition of the word in
II Cor. 1:22, 5:5 and Eph. 1:14; KERR, *APPABΩN*; Y.-G. KWON, Ἀρραβών *as Pledge
in Second Corinthians*, in *New Testament Studies*, 54 (2008), p. 525-541; cf. AHERN,
Indwelling Spirit; W. LILLIE, *An Approach to II Corinthians*, in *Scottish Journal of
Theology*, 30 (1977), p. 59-70. In Christian literature both definitions are used. For the
definition 'pledge', see Origen's commentary to Eph. 1:14, published by J.A.F. GREGG,
The Commentary of Origen upon the Epistle to the Ephesians, in *Journal of Theological
Studies*, 3 (1902), p. 243. For the definition 'down-payment', see Jerome's commentary
and translation of Origen's commentary, *Ephesians* 1.14 (*PL* 26, 457a). For translation
and comparison to the Greek fragments of Origen's commentary, see R.E. HEINE, *The
Commentaries of Origen and Jerome on St Paul's Epistle to the Ephesians*, Oxford, 2002,
p. 104-105. For another example, see note 67.

    [53] For the definition 'pledge', see *Digest* 18.1.35 and the discussion of G. CORNIL,
Die Arrha im justinianischen Recht, in *Zeitschrift der Savigny Stiftung für Rechts-
geschichte*, 48 (1928), p. 51-87; F. de ZULUETA, *The Roman Law of Sale*, Oxford, 1949,
p. 22-23; PRINGSHEIM, *Greek Law*, p. 342-344; R. ZIMMERMANN, *The Law of Obligations:
Roman Foundations of the Civilian Tradition*, Oxford, 1996, p. 230-231 (= ZIMMER-
MANN, *Law*). For the definition 'down-payment', see *Digest* 18.3.6. Some Latin sources
preserved not only the term *arrha* but also the term *arrabon*. An example for that is
Tertullian, who translated *arrabon* with the word *pignus*, pledge, in *Adversus Marcionem*
5.12.4, ed. and trans. C. MORESCHINI – R. BRAUN (*Sources Chrétiennes*, 483), Paris,
2004, p. 248, and with the word *depositum*, deposit, in *De resurrectione carnis* 51.2,
ed. and trans. E. EVANS, *Tertullian's Treatise on the Resurrection*, London, 1960, p. 148-
149. For the description of *depositum* and *pignus*, see M. KASER, *Roman Private Law*,
London, 1968, p. 169-170.

    [54] L.R. FREEDMAN, *Biblical Hebrew 'rb, "to go surety," and its Nominal Forms*, in
The Journal of the Ancient Near Eastern Society, 19 (1989), p. 26.

entered Syriac, in the noun ܪܗܒܘܢܐ (*rāhbunō*), a 'pledge' or a 'deposit' and in our case, an 'earnest'[55]. This form is the Syriac version of the Greek term ἀρραβῶν, since it does not have an ܥ and has a ܗ after the ܪ, reflecting the rough breathing[56] of the ρ[57]. It replaces the possible parallel form to *'rbn/'ārḇôn/ārḇônā*, which disappeared in Syriac.

Both the concept of the betrothal earnest and the legal term used to describe it could be rooted in ancient Semitic sources. The concept is found in the *Laws of Hammurabi* and the origin of the term ܪܗܒܘܢܐ (*rāhbunō*) is found in Semitic languages. However, the time gap between the ancient Near Eastern sources, as well as the Greek spelling of the term ܪܗܒܘܢܐ (*rāhbunō*) lead to the conclusion that the composer of the *Syro-Roman Lawbook* did not lean on such literature. It calls for investigation of contemporary Greco-Roman sources.

When turning to Greco-Roman sources from late antiquity, we find striking parallels. An earnest given prior to marriage in order to secure future marriage is well documented in both Greek and Latin. The first time such an earnest, an *arrha*, appears in Roman law in this context is in a ruling from 380 CE[58]. Thedosius I uses *arrha* and *sponsalia* (betrothal) interchangeably when discussing the *arrha* given as a surety for marriage[59]. He presents a stringent approach claiming that if the betrothal is withdrawn on behalf of the woman, the *arrha* is returned four times. In 469 CE Leo ruled that in certain cases of withdrawal from betrothal after giving an *arrha sponsalia*, a betrothal earnest, the woman should return it twofold[60]. This term is later found in marital contracts from the sixth

[55] *SL*, p. 1439 ܪܗܒܘܢܐ.

[56] According to *LSJ*, p. 246; *PGL*, p. 229; J. Lust – E. Eynikel – K. Hauspie, *A Greek English Lexicon of the Septuagint*, I, Stuttgart, 1992, p. 63, the word is spelled ἀρραβῶν. However, in various sources this word is spelled ἀῤῥαβῶν.

[57] The same phenomenon appears in other Semitic languages, which adopted a form similar to ἀῤῥαβῶν rather than the Semitic form, as S. Fränkel, *Die aramäischen Fremdwörter in Arabischen*, Hildesheim, 1962, p. 190, showed regarding Arabic, A. Dillmann, *Lexicon linguae aethiopicae cum indice latino*, Leipzig, 1865, p. 742, showed regarding Ethiopic, and E. Littmann – M. Höfner, *Wörterbuch der Tigre-Sprache: Tigre-Deutsch-Englisch* (*Akademie der Wissenschaften und der Literatur. Veröffentlichungen der Orientalischen Kommission*, 11), Wiesbaden, 1962, p. 460b, showed regarding Tigre.

[58] Corbett, *Roman Law*, p. 19-23; Evans-Grubbs, *Documentation*, p. 64-69.

[59] *Theodosian Code* 3.5.10-11, 3.6.1, 3.10.1.

[60] *Justinian Code* 5.1.5; cf. *Digest* 23.2.38; F. Schulz, *Classical Roman Law*, Oxford, 1951, p. 109-110. For further discussions regarding premarital gifts in Roman East, see J. Evans-Grubbs, *Constantine and Imperial Legislation on the Family*, in J. Harries – I. Wood (ed.), *The Theodosian Code*, Ithaca, NY, 1993, p. 126-127; Eadem, *Law and Family*, p. 172-183. For other cases in which an *arrha* should be returned in double, see *Justinian Code* 4.21.17 (16). For discussion on the *arrha*, see Zimmermann,

century[61]. In all cases, the purpose of the earnest is to strengthen the obligation to marry by tying it to a financial penalty[62].

This custom is also mentioned in pagan and Christian Greek sources. The earliest Greek source to tie between betrothal and an earnest, an ἀρραβῶν, is Herodian (ca. 180-250)[63]. He translated the word betrothal, μνηστεία, with the word ἀρραβῶν, but did not indicate what exactly is the role of the ἀρραβῶν or when is it given[64]. Origen, his contemporary, in his *Commentary to the Song of Songs*, mentioned an earnest given upon betrothal[65]. In the fourth century Ps. Macarius defined the time when the ἀρραβῶν is given. According to his description it is given by one who is already betrothed (μνηστευόμενος) but prior to marriage[66].

Law, p. 232-234; J.A.C. Thomas, *Arra in Sale in Justinian's Law*, in *Tijdschrift voor Rechtsgeschiedenis*, 24 (1956), p. 253-278, and the summery of M. McAuley, *One Thousand Years of Arra*, in *McGill Law Journal*, 23 (1977), p. 693-706 regarding the debate on the relations between Roman law and Greek law of the *arrha*.

[61] P.Nessana 33 (l. 22), published by C.J. Kraemer, *Excavations at Nessana,* III, Princeton, 1958, p. 106, a sixth century divorce agreement which mentions the ἀρραβῶν; P.Petra 18 (l. 24), published by A. Arjava – M. Buchholz – T. Gagos, *The Petra Papyri,* III, Amman, 2007, p. 22, a renewed dowry agreement from 539 CE, which contains the word ἀρρα[. This word should probably be completed as ἀρραβῶν.

[62] An exemption to this ruling is Justinian's ruling from 546 CE which states that withdrawal from betrothal because either party wishes to enter monastic life will not lead to financial penalty. The ἀρραβῶν should be returned to its giver, regardless of the party withdrawing from the betrothal (*Novels* 123.39).

[63] For biography and full bibliography, see A.R. Dyck, *Aelius Herodian: Recent Studies and Prospects for Future Research*, in *Einzelne Autoren seit der hadrianischen Zeit und Allgemeines zur Literatur des 2. und 3. Jahrhunderts* (*Aufstieg und Niedergang der Römischen Welt*, II, 34.1), 1993, p. 772-776, 792-794; E. Dickey, *Ancient Greek Scholarship*, New York, 2007, p. 75-77 (= Dickey, *Ancient Greek*).

[64] Herodian, *Categories*, ed. J.F. Boissonade, *Herodiani Partitiones*, Amsterdam, 1963, p. 86. In the fifth century, Hesychius of Alexandria translates similarly different terms from the same root. However, he does not distinguish clearly between the ἀρραβῶν, "the earnest", and the δῶρα, "the dowry", linking both to betrothal. In *Lexicon* μ l.1509, ed. K. Latte, *Hesychii Alexandrini Lexicon*, II, Berlin, 1966, p. 672, he translates μνηστεία as γάμου δῶρα (marriage dowry) but μνηστευόμενοι as ἀρραβωνιζόμενοι (pledged, *ibidem*, 1. 1510) and μνήστωρ as ὁ δοὺς τοῦ γάμου ἀρραβῶνα (he who gives a marriage pledge, *ibidem*, l. 1513). For dating and bibliography on Hesychius, see Dickey, *Ancient Greek*, p. 88-90.

[65] This part of the *Commentary* was preserved only in Rufinus's Latin translation, who used two similar expressions: *sponsaliarum et dotis* in 1.3, ed. Brésard – Crouzel, p. 178; 1.5, *ibidem*, p. 178 and *arrhis et [muneribus] dotalibus* in 1.6, *ibidem*, p. 180 to describe the things the bride receives prior to her wedding. By that he may indicate that similar to Theodotius I, he treats these terms as synonyms. In any case, the term *arrha* probably reflects the term ἀρραβῶν in the Greek original.

[66] Ps. Macarius, *Sermons* 8.2.4, ed. H. Berthold, *Makarios/Symeon Reden und Briefe*, I (*Die Griechischen Christlichen Schriftsteller*), Berlin, 1973, p. 120; cf. K. Fitschen, *Pseudo-Makarius: Reden und Briefe* (*Bibliothek der griechischen Literatur*, 52), Stuttgart, 2000, p. 150 who translated ἀρραβῶν with the word 'Verlobung'.

In the beginning of the fifth century[67] John Chrysostom[68] clearly defines the financial role of the ἀρραβῶν in the marital contract. He claims that similar to any other ἀρραβῶν[69] this ἀρραβῶν is a down-payment, part of the full payment which is the dowry that is given upon marriage. This ἀρραβῶν is aimed at creating trust in the future marriage[70].

The spread of this custom, however, is not limited to pagan and Christian communities in the Roman Empire, but can also be found in rabbinic sources. As Asher Gulak notes[71], a similar contract is documented in tractate *Qiddušin* of the Palestinian Talmud, in a *baraita*, a Tannaitic source:

ר׳ אבהו בשם ר׳ יוחנן. סדר הסימפון כך הוא. אנא פלן בר פלן מקדש ליך אנת פל(ן)
[נ׳] בר פל׳ על מנת לית[ן] ליך מיקמת פלן ומיכנסיניך ליום פלן. ואין אתא יום פלן ולא
כנסתיך לא יהוי לי כלום. אירע לו אונס. ר׳ יוחנן אמ׳. אונסא כמא[׳] ד[לא] עבד. ר׳
שמעון בן לקיש אמ׳. אונסא כמאן דעבד. על דעת׳ דר׳ שמעון בן לקיש היך צריך
למיעבד. דאין אתא יום פלן ולא הויתי כונסה לי לא יה(י)[א] עלייך כלום.[72]

R. Abbahu in the name of R. Yohanan: 'This is the order [= formula] of a *symphon*: "I, so-and-so, son of so-and-so, betroth you, so-and-so, daughter of so-and-so, on condition that I give you such-and-such and marry you on

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[67] While the homily *Eutropius* is attached in its manuscript to another homily given in 399 CE, it may refer to a different occasion from April 400 CE. For discussion, see A. CAMERON, *A Misidentified Homily of Chrysostom*, in *Nottingham Medieval Studies*, 32 (1988), p. 34-48; E. GRÜNBECK, *Christologische Schriftargumentation und Bildersprache: zum Konflikt zwischen Metapherninterpretation und dogmatischen Schriftbeweistraditionen in der patristischen Auslegung des 44. (45.) Psalms* (Supplements to Vigiliae Christianae, 26), Leiden – New York, 1994, p. 338-339, note 344.

[68] John Chrysostom, *Eutropius* 2.12 (*PG* 52, p. 407); *ibidem* 2.13 (*PG* 52, p. 408). This custom is also mentioned by Ps. Chrysostom, *In annuntiationem deiparae* (*PG* 62, p. 766), when discussing the relations between Joseph and Mary. In order to claim that Mary was merely betrothed to Joseph, rather than married to him, John Chrysostom claims that the ἀρραβῶν was already given, but the marriage did not take place yet. For further discussion on the polemic over the marital status of Joseph and Mary, see REYNOLDS, *Marriage*, p. 324-327; MONNICKENDAM, *Halakhic*, p. 94-119.

[69] John Chrysostom, *Ephesians* 2.2 (*PG* 62, p. 18-19) and *Eutropius* 2.12 (*PG* 52, p. 407). Cf. John Chrysostom, *Homilies on Genesis* 62.1 (*PG* 54, p. 534), where, following the Septuagint's version to the story of Judah and Tamar, John Chrysostom uses the word ἀρραβῶν as a pledge rather than a down-payment.

[70] Even though the Greek sources do not mention doubling the amount of the ἀρραβῶν in case of withdrawal from the betrothal, this principle was used in Greek sources in other cases of ἀρραβῶν, see PRINGSHEIM, *Greek Law*, p. 414; ZIMMERMANN, *Law*, p. 231-232.

[71] A. GULAK, σύμφωνον *in Betrothal according to the Jer. Talmud*, in *Tarbiz*, 5 (1934), p. 126-133 (Hebrew), and later Z.W. FALK, *Jewish Matrimonial Law in the Middle Ages* (Scripta Judaica, 6), London, 1966, p. 47-48, 88-90 (= FALK, *Matrimonial Law*); M.A. FRIEDMAN, *Jewish Marriage in Palestine. A Cairo Geniza Study*, I, Tel-Aviv – New York, 1980, p. 196 (= FRIEDMAN, *Jewish Marriage*).

[72] *y. Qidd.* 3:2, 63d, ed. *Hebrew Academy*, p. 1170:32-39; *y. Erub.* 3:5, 21b, ed. *Hebrew Academy*, p. 468:14-17.

a certain day. If that day comes and I do not marry you, then I shall have
no claim on you."' [if that day came and he did not marry her] by an una-
voidable accident, R. Yohanan says: 'The accident is as if it did not hap-
pen'. R. Simeon son of Laqish said: 'The accident is as if it did happen'.
In the opinion of R. Simeon son of Laqish how should it [the *Symphon*] be
done? [the woman should write]: 'If the day comes and you do not marry
me, I shall have no claims against you.'

According to this *baraita*, a *symphon* is a conditional postscript to a
contract[73], in which the groom gives his future wife an object that he
will not receive in return if he fails to marry her in due time. However,
contrary to the ἀρραβῶν, the *arrha* or the ܪܗܒܘܢܐ (*rāhbunō*), the
symphon does not fortify the betrothal, it is a condition to it[74]. As such,
if the condition is not met, the betrothal is terminated retroactively, as
if it never existed, without need of full divorce[75]. The *symphon* is not

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[73] The initial definition of the verb συμφωνέω and its declensions σύμφωνος and
συμφωνία refers to harmony or agreement (*LSJ*, p. 1689), but it is also used in context
of financial agreements, see O. BETZ, *συμφωνέω, σύμφωνος, συμφωνία, συμφώνησις*,
in *TDNT*, IX, p. 304-309. For the definition of σύμφωνον as a written agreement,
see D. SPERBER, *A Dictionary of Greek and Latin Legal Terms in Rabbinic Literature* (*Diction-
aries of Talmud, Midrash, and Targum*, 1), Ramat-Gan, 1984, p. 119; R. TAUBENSCHLAG,
The Law of Greco-Roman Egypt in the Light of the Papyri, 332 B.C. – 640 A.D, Warszawa,
1955, p. 296, who added that this term is used in Byzantine epoch and is sometimes
'restricted to special stipulations within a written contract', thus closer to its use in the
Palestinian Talmud. The term appears as a condition in marriage contracts, e.g. P.Dura 30
(l. 28), from 232 CE, published by C. BRADFORD – R.O. FINK – J.F. GILLIAM, *The Parch-
ments and Papyri* (*The Excavations at Dura-Europos*, 5), New Haven, 1959, p. 157. It also
appears in P.Cair.Masp III 67310 (l. 5), a marriage contract from 566-573 CE, written
after consummation of the marriage. It was published by M.J. MASPERO, *Papyrus grecs
d'époque byzantine*, III (*Catalogue général des antiquités égyptiennes du Musée du
Caire*), Cairo, 1911, p. 86.

[74] On conditional betrothal, which is cancelled if the condition is not met, without
need for divorce, see A.H. FREIMANN, מחקר: סדר קדושין ונשואין אחרי חתימת התלמוד
היסטורי-דוגמתי בדיני ישראל, Jerusalem, 1964, p. 386-394; I. WARHAFTIG, *Condition in Kidu-
shim and Nesuim*, in *Mishpatim*, 1 (1968), p. 203-210 (Hebrew); J. GLICKSBERG, קידושין על
תנאי, in תורה שבעל פה, 12 (1970), p. 134-142. On conditions for divorce, see A. SCHREMER,
*'If I die.. If I should not stand up': Conditional Phraseology and the Interpretation of a
Problematic Sugya in BT Gittin 73a*, in *Tarbiz*, 65 (1996), p. 439-449 (Hebrew).

[75] This principle could also explain the difference between the ܪܗܒܘܢܐ (*rāhbunō*) and
betrothal by a deposit or a loan. In rabbinic law, the main method of betrothal is by money,
which has to be valuable (שווה פרוטה). Mishnah *Qiddušin* and the following Amoraic
discussions mention two terms, betrothal by loan, which was discussed by S. FRIEDMAN,
קידושין במלוה, in *Sinai*, 76 (1975), p. 47-76; D. GLICKSBERG, *"Kidushin by Loan" – a
New Proposal*, in *Shenaton Ha-Mishpat Ha-ivri*, 19 (1997-1998), p. 113-137 (Hebrew),
and betrothal by a deposit, as described in *t. Qidd.* 3:1, ed. LIEBERMAN, III.2, p. 285;
b. Qidd. 47b-48b; *y. Qidd.* 2:1, 62b, ed. *Hebrew Academy*, p. 1162:22 ff. However, these
sources do not refer to the loan or the deposit as part of the betrothal, but are troubled by
the value of the betrothal money, since being a loan or a deposit, it is not fully owned by
the man and could therefore be valueless. Similarly, when conditional betrothal is dis-
cussed in the Mishnah, such as the condition: האומר לאשה הרי את מקודשת לי לאחר שלשים

part of an agreement between a couple that is already tied in a marital bond, but is a condition to the initial bond, which was not made yet. Therefore, it does not influence the marital status of the future couple and, being a condition to betrothal, the *symphon* actually weakens it, making it subject to a conditional contract which does not require divorce[76].

The reason for this difference is the basic difference between the concept of betrothal according to rabbinic law and its concept according to Roman law[77]. While in rabbinic law, betrothal is a status as committing as marriage, in Roman law it is merely a promise[78]. Thus, cancelling betrothal according to rabbinic law would require full divorce, whereas in Roman law withdrawal from betrothal would require only a clear notice[79]. Therefore, such an agreement could not be contracted in rabbinic law with regard to betrothal. Furthermore, the suitability between such a contract and the Roman concept of betrothal, together with the

יום ובא אחר וקידשה בתוך שלשים יום מקודשת לשני – 'one who says to a woman: you will be betrothed to me in thirty days, and another came and betrothed her within the thirty days, she is betrothed to the second man' (*m. Qidd.* 3:1; cf. *t. Qidd.* 4:3, ed. LIEBERMAN, III.2, p. 289), the Talmudic discussion does not regard the betrothal money given in this case as earnest money or any other surety, rather as a deposit or loan, and discusses whether it is valuable enough to be considered betrothal money. Furthermore, even if the woman does not want to be betrothed after thirty days, she is betrothed since the condition is met. The betrothal is canceled only if the condition was not met, as in the case when the woman was betrothed to another within the thirty days (*b. Qidd.* 59a-59b). For further discussion, see B. COHEN, *On the Theme of Betrothal in Jewish and Roman Law*, in *Proceedings of the American Academy for Jewish Research*, 18 (1948-1949), p. 92-105 (= COHEN, *Betrothal*).

[76] Both Gulak and Albeck discussed contracts made for betrothal rather than marriage; however, these contracts cannot be compared to the ܪܗܒܘܢܐ (*rāhbunō*), since betrothal itself is as binding as marriage, see A. GULAK, *Deed of Betrothal and Oral Stipulations in Talmudic Law*, in *Tarbiz*, 3 (1932), p. 361-376 (Hebrew) (= GULAK, *Deed*); C. ALBECK, *Betrothal and Betrothal Writs*, in L. GINZBERG – A. WEISS (ed.), *Studies in Memory of Moses Schorr, 1874-1941*, New York, 1944, p. 12-24 (Hebrew) (= ALBECK, *Betrothal*).

[77] For some of the comparative studies on Jewish and Roman matrimonial law, see: GULAK, *Deed*; IDEM, *Justinian Caesar's Novella No. 97 and its Talmudic Antecedents*, in *Shenaton Ha-Mishpat Ha-ivri*, 9-10 (1982-1983), p. 5-13 (Hebrew); COHEN, *Betrothal*; IDEM, *Jewish and Roman Law: a Comparative Study*, New York, 1966; R. KATZOFF, *Comment on Gulak's Article [Justinian Caesar's Novella No. 97 and its Talmudic Antecedents]*, in *Shenaton Ha-Mishpat Ha-ivri*, 9-10 (1982-1983), p. 15-28 (Hebrew); IDEM, *Philo and Hillel on Violation of Betrothal in Alexandria*, in A. OPENHEIMER – I.M. GAFNI – D.R. SHWARTZ (ed.), *The Jews in the Hellenistic-Roman world: Studies in Memory of Menahem Stern*, Jerusalem, 1996, p. 39-57; S.J.D. COHEN, *The Beginnings of Jewishness: Boundaries, Varieties, Uncertainties* (*Hellenistic Culture and Society*, 31), Berkeley, 1999, p. 241-307; B.S. JACKSON, *How Jewish is Jewish Family Law*, in *Journal of Jewish Studies*, 55 (2004), p. 201-229.

[78] Above note 7.

[79] *Digest* 24.2.2.2; *ibid.* 23.1.6; *ibid.* 23.1.10; *Justinian Code* 5.17.7. For discussion, see EVANS-GRUBBS, *Law and Family*, p. 143-144.

foreign word used to describe this term, emphasizes the unfamiliarity of this custom to rabbinic sources and highlights its origin in Greco-Roman culture[80].

The *symphon* is not mentioned in later Palestinian sources. It could, however, be compared to the *muqdam* – an advance payment of the *ketubbah*, the marriage contract – attested to in *ketubbah* documents from the ninth century CE and later from the Cairo Geniza[81]. This money

[80] In rabbinic law, two concepts could allegedly be compared to ܪܗܒܘܢܐ (*rāhbunō*). The first is the *ketubbah* which appeared in the Second Temple. Even though it is described as a security, contrary to the ܪܗܒܘܢܐ (*rāhbunō*), it secures the rights of the wife in case of divorce or widowhood rather than secures the marriage itself. It is a deferred debt of a man to his wife, which may prevent him from divorcing her, or secure her financial rights if divorced. The development of the *ketubbah* and the tradition of R. Shimon ben Shatah are mentioned in *t. Ketub.* 12:1, ed. LIEBERMAN, *III.1*, p. 95; *y. Ketub.* 8:8, 32b, ed. *Hebrew Academy*, p. 996:12-20; *b. Ketub.* 82b. M.A. FRIEDMAN, *The Minimum Mohar Payment as Reflected in The Genizah Documents: Marriage Gifts or Endowment Pledge?*, in *Proceedings of the American Academy for Jewish Research*, 43 (1976), p. 15-47, discussed these sources, relating the *ketubbah* to the biblical *mohar*; M.L. SATLOW, *Reconsidering the Rabbinic ketubah payment*, in S.J.D. COHEN (ed.), *The Jewish Family in Antiquity*, Atlanta, GA, 1993, p. 133-151, and similarly SATLOW, *Jewish Marriage in Antiquity*, Princeton, 2001, p. 200-204, claimed it is a new rabbinic innovation of the first century CE; B.S. JACKSON, *Problems in the Development of the Ketubah Payment: The Shimon be Shetah Tradition*, in C. HEZSER (ed.), *Rabbinic Law in its Roman and Near Eastern Context*, Tübingen, 2003, p. 199-225, related it to the dowry; and M.J. GELLER, *New Sources for the Origins of the Rabbinic Ketubah*, in *Hebrew Union College Annual*, 49 (1978), p. 227-245, related it to Seleucid contracts. Cf. A. SCHREMER, *Male and Female he Created Them. Jewish Marriage in the Late Second Temple, Mishnah and Talmud Periods*, Jerusalem, 2003, p. 233-241 (Hebrew) (= SCHREMER, *Male*), who rejected Satlow's opinion. For further discussion on the understanding of the term *mohar* in second temple, see E.J. BICKERMAN, *Studies in Jewish and Christian History*, I (*Arbeiten zur Geschichte des antiken Judentums und des Urchristentums*, 9), Leiden, 1976, p. 201-215; D. PIATTELLI, *The Marriage Contract and Bill of Divorce in Ancient Hebrew Law*, in *Jewish Law Annual*, 4 (1981), p. 66-78. For the claim that the *ketubbah* is the source for the *arrha*, see C. DUPONT, *Les constitutions de Constantin et le droit privé au début du IVe siècle: les personnes*, Lille, 1937, p. 120-122.

The second concept which could resemble the notion of a ܪܗܒܘܢܐ (*rāhbunō*) is the slave-girl. According to Ex. 21:8-11, a man may sell his daughter as a slave in the hope that her owner or his son will marry her. As D. HENSHKE, *On the Relationship between Targum Pseudo-Jonathan and the Halakhic Midrashim*, in *Tarbiz*, 68 (1999), p. 187-210 (Hebrew) claims, the rabbis did not regard the initial sale, prior to the designation to the master or his son, as a marital bond. If the slave-girl is not designated, i. e. betrothed, and later married, she is redeemed without returning the money paid for her (Ex. 21:11) or requiring a full divorce. Only if she was designated but not married, would her release require a full divorce like any other betrothed woman. We could have therefore concluded that the initial money paid for the slave-girl is similar to the ܪܗܒܘܢܐ (*rāhbunō*), since both are lost if the couple did not marry. However, since she is initially *sold* to be a slave, this money could have been lost for other reasons, for example, being a salary for her work until her designation.

[81] M.A. FRIEDMAN, *Division of the Marriage Gift into Immediate and Postponed Portions in the Cairo Geniza Documents*, in *Proceedings of the Sixth World Congress of*

was given prior to marriage and could, therefore, be understood as a surety, since it may be forfeited if the marriage was not consecrated. Later sources discuss other financial agreements and fines signed at the time of *šidduk* (שידוך)[82], prior to betrothal and marriage[83].

While Syriac sources from fifth century Persia were aware of the ܪ̈ܗܒܘܢܐ (*rāhbunō*), the Babylonian Rabbis did not express any knowledge of the *symphon*. When the term *symphon* is discussed in the Babylonian Talmud, it is misunderstood and interpreted as a מום (*mum*), a defect[84]. The Babylonian Talmud also does not mention any other term which could refer to an earnest given prior to marriage in order to secure marriage[85].

The next documentation of such a contract in Jewish sources is in a Karaite writing from the ninth century. Al Nahudi discusses an ערבון (*'ērābôn*) as a surety given prior to marriage[86]. As in the Palestinian

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Jewish Studies, III, Jerusalem, 1977, p. 381-382; IDEM, *Jewish Marriage*, p. 271-275; ASHUR, *Engagement*, p. 72-76. In the Gaonite period gifts were added to the *ketubbah* as an obligation of the groom. These were given either at the time of marriage or after it and are aimed at securing a woman's financial rights in case of divorce or widowhood. I. EPSTEIN, שטר מתנה לחוד והצדאק, in המשפט העברי, 4 (1933), p. 125-134, related it to a Muslim custom; I. FRANCUS, *Matanah Lehud in the Gaonic and Classical Period*, in *Shenaton Ha-Mishpat Ha-ivri*, 6-7 (1979-1980), p. 243-269 (Hebrew) discussed its development from the Gaonic period; B. LIFSHITZ, *Mattanah Le-hud – Acquisition and Obligation in Contrast*, in *Diné Israel*, 12 (1985), p. 125-154 (Hebrew), discussed the level of obligation in case of divorce; and J. RIVLIN, שטר "מתנה לחוד", in *Asufot*, 11 (1998), p. 167-181 (Hebrew); IDEM, *More in "a Separate Gift" and the Rebelious Wife*, in *Annual of Bar-Ilan University Studies in Judaica and Humanities*, 30-31 (2006), p. 501-519 related this custom to the discussion on a rebellious wife.

[82] Above note 13.

[83] See, for example, *Shut Rosh* 34, which describes an agreement imposing a fine in case one side cancels future betrothal and marriage. Similar rulings could be found in *Shut Ribash* 280 and others.

[84] *b. Ketub.* 57b; *b. Qidd.* 10b-11a. For full discussion, see ALBECK, *Betrothal*, p. 20-21.

[85] In *t. Pas.* 3:14, LIEBERMAN, II, p. 154-155 and *b. B. Bat.* 144b the sages discuss returning *Qiddušin*, the money given upon betrothal, if the betrothal did not end with marriage. They claim that such return is dependent upon local custom: מקום שנהגו להחזיר את הקדושין מחזיר, מקום שנהגו שלא להחזיר אין מחזירין: 'Where it was customary to return the betrothal money he returns [it], where it was customary not to return [the betrothal money], they do not return [it].' Similarly, both the Palestinian and the Babylonian Talmuds discuss returning gifts (סבלונות) the bridegroom gave his bride during the betrothal, but they, too, do not fortify the betrothal and are not seen as sureties securing future marriage. For the term *Qiddušin* as referring to the betrothal money, see B. LIFSHITZ, אפקעינהו רבנן לקידושין מיניהו, in M. GREENBERG – A. RIVLIN – U. DASBERG et al. (ed.), מפירות הכרם, Jerusalem, 2004, p. 318-319; for discussion regarding the gifts (סבלונות), see SCHREMER, *Male*, p. 280-285.

[86] Benjamin Al-Nahawendi, ספר דינים משאת בנימן, Ramla, 1978, p. 37: אדם שנתן ערבון לאשה בפני עדים והתנה עמה שאם על כך וכך ימים עשיתי כך או אעשה כך או כל התנאים הרי היא מקודשת ואשתו היא ובלבד שתקח ערבון כה"א ואשבע לך ואבוא בברית אותך וגו': ואומר והיא

Talmud, he describes this as a condition for the actual betrothal rather than a fortification of the agreement. If the condition is not fulfilled, the woman is not betrothed and therefore does not need a full divorce from betrothal[87].

Summarizing the sources so far shows the widespread presence of this custom throughout the Roman Empire, in pagan, Christian and rabbinic literature, starting from the third century. This influence has reached the eastern parts of the Roman Empire, and is even documented in a Syriac Persian text from the middle of the fifth century, although not in rabbinic Babylonian sources of that time.

And yet, the integration of this custom to the Syriac community should not be dated to the fifth century, as could be implied from its appearance in the *Syro-Roman Lawbook*. Even though the early eastern documentations of this custom seem to be limited to Greek and Jewish Palestinian sources, just as the case of the kiss, here too, Ephrem supplies evidence to the influence of this custom on the Syriac Christian community. In the second half of the fourth century[88], in his *Hymns on Nisibis* Ephrem writes:

חברתך ואשת בריתך: ללמדך שכל תנאי וברית עם איש לנשאה לאשה קיים ואם לא מתקיימין התנאים (ערבון) A man who gives an earnest :או חוזר הוא או חוזרת היא או אינה מקודשת ובטלו הקדושין. to a woman in front of witnesses and seals a condition with her that if by so-and-so days I do such-and-such or will do such-and-such or all other kinds of conditions, she is betrothed to him and his wife, only if she takes the earnest, as it is written: 'and I entered into a covenant with you by oath' etc. (Ezk. 16:8); and it is said: 'she is your partner and covenanted spouse' (Mal. 2:14). That is to teach you that any condition and agreement with a man to take her to a wife exists, and if the conditions are not fulfilled, either he regrets or she regrets, she is not betrothed and the betrothal is cancelled.' Cf. *ibidem*, p. 35, regarding the discussion on gifts given to a betrothed woman, which must be returned because they were given assuming the couple will marry. However, if the husband is the one who canceled the marriage, they are not to be returned. For further discussion on Karaite betrothal, see J. OLSZOWY-SCHLANGER, *Karaite Legal Documents*, in M. POLLIACK (ed.), *Karaite Judaism: A Guide to Its History and Literary Sources*, Leiden – Boston, 2003, p. 284-285, who claims that according to Karaite betrothal documents found in the Genizah, the woman may keep half of the advance payments. However, these cases refer to the betrothal itself rather than a condition to it.

[87] The term ערבון is found in rabbinic betrothal bills from the tenth century, but there it refers to a pledge given to an agent of the bride as part of the betrothal ceremony, in order to ensure the groom will provide for his future wife until their marriage. For such betrothal bills, see S. ASSAF, *Texts and Studies in Jewish History*, Jerusalem, 1946, p. 66-68 (Hebrew) (= ASSAF, *Texts*) and the discussion of FALK, *Matrimonial Law*, p. 91-92; FRIEDMAN, *Jewish Marriage*, p. 209-211; cf. ASSAF, *Texts*, p. 65; S.H. KOOK, עיונים ומחקרים, Jerusalem, 1963, p. 81-82.

[88] For dating, see E. BECK, *Des Heiligen Ephraem des Syrers Carmina Nisibena* (*Corpus Scriptorum Christianorum Orientalium*, 219; *Scriptores Syri*, 93), Louvain, 1961, p. II-V; J. MARTIKAINEN, *Some Remarks about the Carmina Nisibena as a Literary and a Theological Source*, in *Symposium Syriacum 1972 = Orientalia Christiana Analecta*, 197 (1974), p. 345-351; LANGE, *Portrayal*, p. 32.

ܘܟܐ ܚܪ ܐܠܠܟ ܗܘ ܡܚܕܐ ܢܘܒܕ ܐܬܘܬ ܢܚܝܢ
ܐܦ ܢܚܝܢ ܡܫܡ ܐܬܘܢ ܐܟܕܐ ܐܪܬܘܢ
ܕܡ ܐܪܬܘܢܐ ܢܘܒܕ ܗܘܐ ܠܗ ܗܘ ܐܪܥܝܐ ܡܚܘܒܪܢܐ
ܐܕܝܪ ܢܘܡ ܡܬܒ ܕܡܟܐ ܐܬ ܐܕܟܠܡ ܐܦ ܢܦܬ ܠܗ.

> And if when [Jesus] was a child, fled and went down, Egypt marveled /
> She[89] also soothed him, [though] she strangled babies[90], she loved [this]
> baby / Did [Jesus] go down [to Egypt] to give her an earnest as a betrother? /
> He gave assurance that when he grows up, he will also take her [to wife][91].

Ephrem retells the flight of Joseph and Mary to Egypt as the story of a
boy promising a girl he will marry her when he comes of age. According
to Matt. 2:1-23, Herod hears of the birth of Jesus and commands that all
of the Judean babies be killed. An angel warns Joseph and he escapes to
Egypt with his wife Mary and their newborn son Jesus. After the death
of Herod they leave Egypt and return to Palestine[92].

Ephrem explains Jesus' journey to Egypt as a journey to bring her
an earnest, a ܪܗܒܘܢܐ (*rāhbunō*), to confirm that he will marry her, as
his church, when he comes of age[93]. The ܪܗܒܘܢܐ (*rāhbunō*) described
here appears to be something given by the suitor, either the groom or
his representative, to his future bride as assurance for future marriage.
By that, Ephrem attests to the custom to give a ܪܗܒܘܢܐ (*rāhbunō*) in
the Syriac Christian community of his time, more than a century earlier
than the *Syro-Roman Lawbook*.

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[89] Egypt, ܢܚܝܢ, in Syriac is feminine.

[90] Ex. 1:22, the Egyptian attempt to kill all Israelite babies. Another possibility is to
claim that the feminine verb ܡܫܡ, 'strangles' refers to Palestine, where Herod com-
manded that all babies be killed. However, this interpretation is unlikely because that
would require claiming that the subject changed in the middle of the sentence, from Egypt
to Palestine.

[91] Ephrem, *Nisibis* 60.24-25, ed. E. BECK, *Des Heiligen Ephraem des Syrers Carmina
Nisibena*, II (*Corpus Scriptorum Christianorum Orientalium*, 240; *Scriptores Syri*, 102),
Louvain, 1963, p. 93.

[92] For a discussion on parallels to Jewish traditions, see R.E. BROWN, *The Birth of
the Messiah. A Commentary on the Infancy Narratives in the Gospels of Matthew and
Luke* (*The Anchor Bible Reference Library*), New York, 1993, p. 109-119; A. KENSKY,
Moses and Jesus: The Birth of the Savior, in *Judaism*, 42 (1993), p. 43-49; R.D. AUS,
*Matthew 1-2 and the Virginal Conception in Light of Palestinian and Hellenistic
Judaic Traditions on the Birth of Israel's First Redeemer, Moses* (*Studies in Judaism*),
Lanham, 2004.

[93] The image of Jesus as a groom marrying his church is widespread, starting from the
New Testament. It was lately discussed by J. MCWHIRTER, *The Bridegroom Messiah and
the People of God: Marriage in the Fourth Gospel* (*Society for New Testament Studies.
Monograph Series*, 138), Cambridge, 2006. Its appearance in Syriac sources was discussed
by H. ENGBERDING, *Die Kirche als Braut in der ostsyrischen Liturgie*, in *Orientalia Chris-
tiana Periodica*, 3 (1937), p. 5-48; R. MURRAY, *Symbols of Church and Kingdom: a Study
in Early Syriac Tradition*, Cambridge, 1975, p. 131-158.

Conclusions

This study opened with two customs mentioned in the *Syro-Roman Lawbook* as part of the betrothal process, the kiss, which is part of the betrothal itself, determining the level of commitment, and the earnest, the ܪܗܒܘܢܐ (*rāhbunō*), which helps guarantee the future marriage by imposing a fine on those who withdraw from the betrothal. Both customs are well documented in Roman law and may have been known to the composer of the *Syro-Roman Lawbook* from Roman sources. This could be indicated from the strong resemblance between the *Syro-Roman Lawbook* and the Roman legal sources. Furthermore, both customs are also found in other Latin sources, both Christian and pagan, strengthening the assumption that this is part of the larger Roman legislation. This, however, does not mean that the kiss and the betrothal earnest were absent from eastern sources before the fifth century.

As we have seen, the kiss and the earnest can be found in Greek sources starting from the third century CE, in the writings of Origen and later writers. Furthermore, the betrothal earnest is also documented in the Palestinian Talmud, where its foreign origin was emphasized by the odd terminology used to describe it. Most importantly, it was known to a key Syriac writer prior to the fifth century. As we have seen, two comments in Ephrem's writings reflect familiarity with both of these customs from as early as the fourth century CE. Therefore, we may conclude that these two customs did not wait for the Syriac translation of the *Syro-Roman Lawbook*, but penetrated Syriac Christianity as early as the fourth century, if not earlier.

Furthermore, Ephrem's evidence is important not only because of its early date, but also because of its quality. Contrary to the *Syro-Roman Lawbook*, Ephrem's writings are not legal writings. As such, they are not intended to describe a legal system or instruct a community's legal behavior. In fact, the question of the earnest or the kiss is not the main issue Ephrem discusses in the paragraphs cited. Therefore, the likelihood that the evidence cited from Ephrem's writings reflects an actual practice rather than desirable practice is high. He is functioning here as a contemporary observer rather than a legislator or an arbitrator, thus being more reliable than the legal sources. Hence, the entry of these two customs to Syriac Christianity is not only earlier than the fifth century, it may also be much more profound than could be implied from their appearance in the *Syro-Roman Lawbook*[94].

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[94] For the use of non-legal literature as a source for describing legal practices, see F. LYALL, *Legal Metaphors in the Epistles*, in *Tyndale Bulletin*, 32 (1981), p. 81-96;

It is worth, however, distinguishing between discussing the origin and influence of these customs on Syriac Christianity, and the textual origins of the *Syro-Roman Lawbook*. Even though locating early references to these two customs is significant to the understanding of the influence of Roman law on Syriac Christianity, it is not necessarily significant to the understanding of the textual sources of the *Syro-Roman Lawbook*. Ephrem's writings show that the penetration of Roman legislations or practice into Syriac Christianity did not begin with the translation of the *Syro-Roman Lawbook*, but could be found a century earlier. Nevertheless, that does not mean that the textual sources of the *Syro-Roman Lawbook* are not Greek. This composition may have been directly translated from Greek, as seen from the strong resemblance between the *Syro-Roman Lawbook* and the parallel legal sources, in our case, the *Theodosian Code*. Its textual sources are still influenced by direct Roman legislations. Nevertheless, this translation does not signify a beginning of a completely new legal system, but the reinforcement of a legal system which was, at least partially, already known to the Syriac Christians.

Moreover, the fact that two Roman customs dealing with betrothal appear in Ephrem's writings does not mean that Ephrem's concept of betrothal and marriage, as a whole, was Roman. It shows that Ephrem was familiar with practices rooted in Roman legislation which were also familiar to other Christians of his time. These practices, in addition to being Roman, are documented in Christian sources earlier than Ephrem and could have been known to him through Christian channels rather than Roman ones. Furthermore, both the kiss and the earnest are part of the ceremonial and formal aspect of betrothal and the ties between the families. Ephrem could therefore interpret them as part of the Christian marriage. In other aspects of matrimonial law – in cases that are not seen as part of the Christian identity – Ephrem seems to be preserving ancient Jewish traditions[95].

The kiss and the betrothal earnest are test cases, reflecting the influence of Roman legislation on the early Syriac communities. Whether these two practices reflect a larger phenomenon of Roman legal influence on Syrian Christians or a unique case of such influence requires further research and further examples. However, these two examples certainly show the importance of such a study and point to a new direction which

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B. Lifshitz, ערבות לגוף – הלכה ואגדה, in A. Edrei – M. Bar Asher – J. Levinson et al. (ed.), *Studies in Talmudic and Midrashic Literature in Memory of Tirzah Lifshitz*, Jerusalem, 2005, p. 231-245.

[95] Monnickendam, *Halakhic*; Eadem, *Articulating*.

was neglected so far in the study of early Syriac sources – a legal study of early non-legal Syriac sources.

The kiss and the earnest, two Roman milestones on the way to marriage did not remain in the Western Roman Empire but entered its eastern parts, bordering the Persian Empire. This influence did not wait for the vast translations of the fifth century, but started, in small steps, in the fourth century, or maybe even earlier than that.

The Martin Buber Society of Fellows   Yifat MONNICKENDAM
The Hebrew University of Jerusalem
Rabin Building, Room 2201
Mt. Scopus, Jerusalem, 91905, Israel
yifat.monnickendam@mail.huji.ac.il

Abstract — The *Syro-Roman Lawbook*, written in Greek and translated to Syriac at the end of the fifth century, is perceived as one of the early representatives of Roman influence on Syriac Christianity. However, tracing the roots of two customs documented in this composition shows earlier influence of Roman law in the Christian east. According to the *Syro-Roman Lawbook*, a kiss and earnest are both given during the process of betrothal in order to strengthen its validity. Even though both customs are well attested in Roman law and Latin Christian sources, they are also found in non-legal Greek writings as early as the third century, and non-legal Syriac writings as early as the fourth century. These findings show that the influence of Roman law on the Christian east in general and the Syrian east in particular, is not only earlier than thought but also more profound. The non-legal sources show that these legislations were neither introduced to Syriac Christians through the *Syro-Roman Lawbook*, nor imposed as new legislations, but rather were known and practiced by the fourth century if not earlier.