daughters are obliged to marry within their own tribe could not have seemed a hardship—perhaps it hardly seemed an innovation—because from the earliest times a kinsman was thought to be the most desirable suitor for a young woman's hand. Arab custom in this matter is well known, and as late as the time of Tobit the cousin had a presumptive right as against other suitors.

In the post-Exilic period, therefore, the idea of women holding property and inheriting it became thoroughly established. Job gave his daughters portions along with his sons, and the author of the last chapter of Proverbs found it natural that a capable woman should buy a field with the earnings of her own hands.[1] Written testaments are nowhere spoken of in the OT, but it is assumed that a man about to die will dispose of his estate by word of mouth. So Ahithophel 'gives orders concerning his house' before committing suicide;[2] and Hezekiah, when dangerously ill, is advised to regulate his affairs.[3] The last words of a father to his sons would naturally couple advice and admonition with directions concerning property. Hence the character of the testament (though not so called) put into the mouth of Jacob. Ben Sira recommends that one distribute his goods at the end of life, but not earlier.[4] It is not certain that a written will is intended in any of these passages, or in the passage in Tobit sometimes cited in this connexion.

The latest portions of the Pentateuchal legislation aim at limiting the right of testamentary disposition in accordance with the theory of divine ownership. The land being Jahweh's, and assigned by Him to the various tribes, it should be kept in perpetuity in possession of those tribes. To this end no man was to have the right of disposing of his share to any one but the next-of-kin. Moreover, in case he were driven by poverty so to dispose of it, he could give only a lease for the time to the next Jubilee year, when it would revert to him or his direct descendants. The basis of this regulation is probably the old clan order by which the individual held only what was assigned him by the commune. We learn from Jeremiah that, when land was sold, it was offered first of all to a kinsman.[5]

Whether a criminal forfeited his property rights is nowhere specifically told us. When Naboth was executed for blasphemy,[6] his estate was seized by the king; but this may have been simply an act of tyranny, and without authority of law or custom. If we may argue from Achan's case,[7] the man guilty of sacrilege had his property destroyed with himself. What became of his lands when he had any is not clear. We should expect them to be forfeited to the temple, as 'devoted' to the divinity.

LITERATURE.—The Hebrew law as understood by the traditional authorities is formulated in the Talmud treatises *Baba Bathra* and *Yebamoth*. The most thorough discussion, and one still valuable, is J. Selden's *De Successionibus ad Leges Hebræorum in Bona Defunctorum* (1638), in his collected works, London, 1726, vol. ii. 1–76; J. D. Michaelis treats the subject with his usual learning in his *Mosaisches Recht*, Frankfort, 1770 (Eng. tr. *Commentaries on the Laws of Moses*, London, 1814), §§ 78–80 and 98; L. Lévy, *La Famille dans l'antiquité israélite*, Paris, 1905, and T. Engert, *Ehe- und Familienrecht der Hebräer*, Munich, 1905, give good summaries of what is known on the subject. On the levirate, see S. R. Driver's commentary on Dt 25[5-10], where other literature is cited. The custom of release among modern Jews is described by J. Buxtorf, *Synagoga Judaica*[3], Basel, 1661, § xxx., and by J. C. G. Bodenschatz, *Kirchliche Verfassung der heutigen Juden*, Erlangen, 1748, pp. 148–158. Reference may be made also to the articles 'Heir,' in *HDB*, 'Erbe,' in Hamburger, 'Inheritance,' in *JE*, and 'Familie und Ehe bei den Hebräern,' in *PRE*[3], vol. v. (1898), condensed as 'Family and Marriage Relations,' in Schaff-Herzog, vol. iv. (1909).

H. PRESERVED SMITH.

1 Job 42[15], Pr 31[16]. 2 2 S 17[23]. 3 2 K 20[1ff.]. 4 Sir 33[19.23], Tob 8[21]. 5 Jer 32[6-14]. 6 1 K 21[13ff.]. 7 Jos 7[24f.].

INHERITANCE (Hindu).—The rules of succession, as developed by the Brāhman lawyers of India, may be described as to some extent a spiritual bargain in which the right to succeed to another depends on the successor's capacity for benefiting that person by the offering of funeral oblations (*śrāddha*). Thus the term *sapiṇḍa*, which is commonly used to denote a heritable relation, means literally a relation connected through funeral oblations of food, such as a ball of rice (*piṇḍa*). The more remote ancestors, viz. the great-grandfather, his father and grandfather, who are offered only the fragments of that ball of rice which remain on the hands of the offerer, were therefore called 'partakers of the wipings' (*lepabhāgin*, Manu, iii. 216). Still more distant is the relationship of *samānodakas*, or kinsmen, connected by the mere offering of water, said to extend to the fourteenth degree. In a decision of the Judicial Committee of the Privy Council, it was declared that 'there is in the Hindu law so close a connexion between their religion and their succession to property, that the preferable right to perform *śrāddh* is commonly viewed also as governing the preferable right to succession of property.' Dubois (in India, 1792–1823) observes (*Hindu Manners*[3], p. 374) 'that the right of inheritance and the duty of presiding at the obsequies are inseparable one from the other. When, therefore, a wealthy man dies without direct descendants, a crowd of remote relatives appear to dispute with each other the honour of conducting the funeral rites. The contest is occasionally so tumultuous and prolonged that the body of the deceased is in a state of complete putrefaction before a definite settlement of these many pretensions is arrived at.' And so an old Sanskrit authority says, 'He who inherits the wealth presents the funeral oblation,' and 'A son shall present the funeral oblations to his father, even though he inherit no property' (*Institutes of Viṣṇu*, xv. 40, 43). The doctrine of spiritual efficacy was further developed, and relied on as a corroborative argument in favour of certain expositions of the texts on inheritance, in the *Dāyabhāga* and other leading works of the Bengal School of law. The *Mitākṣarā*, on the other hand, which is the leading authority on the law of inheritance for the majority of the Hindus, explains the term *sapiṇḍa* as denoting one of the same body, *i.e.* a blood relation, and does not give countenance to any other principle than propinquity, or proximity of birth, as regulating the order of succession. Nevertheless, the connexion between the right of succession and the obligation to offer the customary *śrāddhs* may be supposed to have been constantly present to the Hindu mind. The widow, in particular, who succeeds to her husband's property on failure of male descendants, is enjoined to offer up the regular oblations to him at stated times.

The religious element enters largely into the Indian law of inheritance in other respects besides the general rules of succession. Thus civil death, *i.e.* the exclusion of a man from his caste on account of some offence or breach of caste rules, has the same consequences as natural death, and causes the property of the person out-casted (*patita*) to devolve on his heirs, and himself to lose the capacity to inherit any property devolving on him. Civil death is now inoperative, as loss of caste, according to an Act of 1850, does not affect a man's civil rights. Spiritual relationship is recognized as well as blood relationship, the pupil succeeding to his spiritual teacher and *vice versa*. No relative can, as a rule, claim any property acquired by a man during the time he was a *sannyāsī* (ascetic). It is taken by one of his disciples, who should perform the funeral rites according to custom. The succession goes either by nomination by the previous

sannyāsī or by election after his death. The *sannyāsis* are, in many cases, heads of a *matha* (*mutt*), *i.e.* of a religious institution founded and endowed for the purpose of maintaining and spreading the doctrines of some religious sect. These monastic institutions were endowed with considerable grants of land by Hindu princes and noblemen, their property being vested in the preceptor or head for the time being, generally called *mahānt*. Though many of these *mahānts* have become worldly, or are not even versed in the first principles of their religion, the acquirement of wealth by trade being their great object, the old rule of succession remains, and the property passes by inheritance to no one who does not fill the office. It is devoted to the maintenance of the establishment, but the superior has large control over it and is not accountable for its management. The two principal Sanskrit treatises on inheritance and succession on which the law as administered by the British Courts of India is supposed to be based are the *Mitākṣarā* and the *Dāyabhāga*. Colebrooke's English translation of these two works was first published in 1810.

LITERATURE.—R. West and G. Bühler, *A Digest of the Hindu Law of Inheritance, Partition, and Adoption*[3], 2 vols., Bombay, 1889; J. D. Mayne, *Hindu Law and Usage*[7], Madras, 1906; J. Jolly, *History of the Hindu Law*, Calcutta, 1885; G. Sarkar, *Hindu Law*[2], do. 1903; J. A. Dubois and H. K. Beauchamp, *Hindu Manners*[3], Oxford, 1906; E. J. Trevelyan, *Hindu Law*, London, 1912; *Madras Law Journal*, 1891 ff.

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INHERITANCE (Jewish).—The Jewish law of inheritance based itself on the Biblical regulations (on which see W. H. Bennett, art. 'Heir,' in *HDB* ii. 340). In the Rabbinic Code these regulations were systematized, and the accepted principles are given in the Codes of Maimonides (*Hilkhoth Naḥaloth*) and Joseph Qaro (*Ḥoshen Mishpaṭ*, §§ 250–258 and §§ 276–289). In modern times, Jewish practice naturally conforms to the civil laws of the States in which Jews are domiciled. So far as the older Rabbinic laws are concerned, the rule of inheritance may be summarized as follows:

'The order of succession in intestacy is: first, sons (eldest son taking a double portion), their descendants; daughters, their descendants. Failing issue, the father succeeds, then brothers (Mishn. *Baba Bathra*, viii. 2). Sisters come after brothers and their descendants (*ib.*). If a son dies in his father's lifetime, grandchildren succeed to their father's share in the estate of their grandfather (Bab. *Baba Bathra*, 122*b*). A man is his mother's heir, the husband is the wife's heir, but the wife is not her husband's heir. She has, however, her dower. Illegitimacy is no bar to inheritance or transmission. Recognition by father is accepted as proof that children are his (*ib.* viii. 6). Hotchpot was not recognized in Jewish jurisprudence (*ib.* viii. 8)' (M. Hyamson, *Mosaicarum et Romanarum Legum Collatio*, London, 1913, p. 161; cf. J. H. Greenstone, in *JE* vi. 583).

The owner of property could not depart from this order in bequeathing by way of inheritance, though he could do so if he bequeathed by way of gift.

'The law of testamentary succession, as laid down in the Bible (Nu 27[8-11]), is unalterable; and any attempt made by the owner of property to bequeath it as an inheritance to those who would not naturally inherit it is null and void. No one can be made an heir except such persons as are mentioned in this Biblical law; nor can the property be lawfully diverted from the heirs by the substitution, either orally or in writing, of some other person as heir (Mishn. *Baba Bathra*, viii. 5); but the owner of property has such control over it that he may dispose of it by sale or gift to any person, to the exclusion of his heirs. This important distinction, therefore, must be noted, that a bequest by way of inheritance to persons other than the legal heirs is null and void, whereas a bequest by way of gift is valid' (D. W. Amram, in *JE* iii. 43).

Such procedure was, however, regarded with much disfavour by the Rabbis (Bab. *Baba Bathra*, 133*b*; *Kethuboth*, 53*a*), and it was very unusual for the owner to depart through bequest by way of gift from the order of succession (see L. N. Dembitz, in *JE* xii. 522). One important point deserves special mention. The Pharisaic Law denied to daughters any share in the inheritance if there were sons, though the Sadducees (Bab. *Baba Bathra*, 115*b*) and later on the Qaraites (J. Fürst, *Gesch. des Karäerthums*, Leipzig, 1865, i. § 9) gave the daughters equal rights with their brothers. Nevertheless, in the Pharisaic scheme the daughter had ample rights for maintenance while unmarried. Very significant is the decision of Admon (first half of 1st cent. A.D.)—a decision confirmed by Gamaliel:

'If a man die, leaving sons and daughters, and his estate be large, the sons inherit it and the daughters are maintained by it; but if the estate be small, the daughters are maintained by it, and the sons may go begging' (Mishn. *Kethuboth*, xiii. 3).

The Court might set aside a part of the estate in trust for the maintenance of the daughters (on all these matters see D. W. Amram, in *JE* iv. 448). In general, it must be remembered that the family solidarity (see art. FAMILY [Jewish]) and sense of good-will among its members secured an equitable distribution of the family goods, which were to a large extent enjoyed in common.

As to the extra-legal ideas associated in Jewish thought with the idea of inheritance, the Rabbis were concerned to combat the view that the Israelite *inherited* the Law. He had to acquire his part in the Torah by his active study and performance of it. R. Josê (Mishn. *Aboth*, ii. 12) said: 'Set thyself to learn Torah, for it is not an heirloom unto thee.' This, at first sight, may seem contradictory of Dt 33[4] 'Moses commanded us a law, an inheritance for the assembly of Jacob.' But the Sifrê (§ 345, ed. M. Friedmann, Vienna, 1864, p. 143[b]) interprets the text to mean that the Law is not an aristocratic possession; it belongs to all Israel. The Rabbinic attitude closely illustrates the saying of Goethe: 'What thou hast inherited from thy fathers, be sure thou earn it, that it may be truly thine.' This is enforced in another saying: 'Pay special regard to the sons of the poor, for from them the Torah goeth forth' (Bab. *Nedarim*, 81*a*), the point being, as the Talmud remarks, that a learned man's offspring are not always learned, lest it be believed that the knowledge of the Torah is an inheritance. On the other hand, the children of the unlearned might be among the active promoters of the knowledge of the Law (*Sanh.* 96*a*). All Israel (and the righteous of all nations were included in the boon [Tosefta *Sanh.* xiii.]) had its share in the future life (Mishn. *Sanh.* x. 1), in accordance with the Rabbinic exegesis of the text (Is 60[21]), 'thy people also shall be all righteous, they shall inherit the land for ever.' So, for a while Israel may forsake the law, but, when he seeks to return, he need feel no shame; it is his ancestral inheritance that he resumes possession of (*Exod. Rabbah*, xxxiii. 7). This combination of confidence in Israel's future and demand for Israel's present effort is a unique quality in the Rabbinic system of morality. Yet another way of meeting the difference between the two points of view may be cited. The Torah is Israel's *communal* inheritance, but the *individual* has to win for himself the right to share (cf. Comm. of W. Einhorn to the passage cited from *Exod. Rabbah*, ed. Wilna, 1878, p. 123).

Turning to another aspect of the idea of inheritance—it was considered a misfortune for a man to leave no son to inherit his estate. Such misfortune was sometimes regarded as due to the father's misconduct; witness such sayings as: 'If one destroys by fire his neighbour's produce, he leaves no son to be his heir' (Bab. *Soṭah*, 11*a*). Absalom (*loc. cit.*) was childless at his death; his three sons and his daughter predeceased him as a punishment for his having set fire to Joab's grain (2 S 14[30]). The pious Israelite was also considered to have neglected one of his main duties unless he married with the hope of leaving issue (Bab. *Berakhoth*, 10*a*; *Yebamoth*, 63*b*, and often). The idea went beyond the desire to continue the race. Almost mystically the divine presence dwelling in a man was carried over to his children (*Yeba-*