

ASPECTS OF COURT PROCEDURE
IN ANCIENT ISRAEL AND MESOPOTAMIA.

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ABSTRACTAspects of Court Procedures in Ancient Israel and Mesopotamia

Israelite court practice is re-examined in the light of the more abundant contemporary cuneiform documents from Mesopotamia and Syria.

The functioning of the court system is first discussed (Chap. 1) with special reference to the king, who is shown not to be an innovator in the area of law, but to maintain the precepts of his predecessors.

(Chap. 1)

The relationship between the king, who functioned as a judge, the subsidiary judges, and the assembly as a legal forum is discussed. An explanation is offered of the role of military personnel within the judiciary (Chap. 1).

Akkadian and Hebrew terms for accusers are discussed and the means by which a suit arose outlined. Official accusers are distinguished from casual accusers, and accusation as a public duty. The incentives for accusers are considered together with the safeguards against false accusation. (Chap. 2)

Chap. 3 analyses the Hebrew and Akkadian terms used for different stages of the lawsuit:- raising a claim, the outlining of a case, presentation of evidence and witnesses, judges' examination, testing of case, decision, enforcement, issuing of documents. The concept of the "covenant lawsuit" in the O T is discussed and a new interpretation offered in the light of cuneiform evidence.

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Introduction

Among the numerous ancient legal documents discovered in Mesopotamia many give details of the procedure adopted by the Mesopotamian courts. In Israel, by contrast, the evidence available for understanding court procedure is scant. The O T is almost the only source for reconstruction and most of the references there are in prayers and oracles where a knowledge of the procedure is taken for granted. Apart from a few records of actual trials, *eg.* Solomon's advice to divide a child between claimants (I Kings 3:16-18), Naboth's stoning (I Kings 21:1-14), and the decision regarding the daughters of Zelophehad (Nu. 27:1-11), there is nothing in the Old Testament to compare with the objective court records of the Assyrian and Babylonian archives.

On this basis these sources are examined to determine court procedure in both Israel and Mesopotamia and to make comparison between the two systems. The extent to which new information is obtained by these comparisons and the contribution each source makes to the clarification of the other is best seen from the summary of conclusions on pp. 167-170.

As to the question of methodology, the basic idea of using Assyrian and Babylonian material to help in the elucidation of Hebrew legal life has been questioned, in particular by Boecker. After having pointed out that Egyptian legal records cannot be used to illustrate Israelite practice because of the different concepts of law prevailing in the two countries and the fact that Egyptian legal practice was never at any stage an influence on Palastinian thinking, he concludes that the same arguments against Egyptian comparisons largely apply also in the case of Mesopotamian material. He says that the geographical, economic, and sociological conditions in

Palestine are quite different from those in Mesopotamia so that one cannot hope to use Assyrian and Babylonian material to fill gaps in existing knowledge of the Israelite practice of law.¹ He admits, however, that indirect Mesopotamian influence, especially in the area of law, cannot be neglected and uses this material from time to time to show the parallels which exist between it and the O T.² This is an entirely subjective evaluation of the evidence and therefore allows Boecker to form his own opinion as to a given issue purely on the, often slender, evidence of the O T and only then to adduce those points of Mesopotamian law which agree with his conclusions. His strictures concerning the application of Egyptian material in comparison with the O T are entirely valid but they do not apply to the case of Mesopotamian material.

The close connection of the Hebrews with Mesopotamia is preserved in the tradition of Abraham's migration from Ur and the subsequent efforts to obtain a wife for Isaac from Abraham's kinsfolk in Aram Naharaim. In contrast, the Hebrews regarded their stay in Egypt as a period of bondage and separation from the Egyptians who led a distinctly different life in a different part of the country. Moreover, the concept of 'cuneiform law' advanced by Koschaker³ and Speiser⁴ views Mesopotamia as the home of a legal tradition which spread to a wide area in which the cuneiform script came to be used and in which Akkadian was used as the language of legal documents.

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1. H.J. Boecker, *Redeformen*, 15.
 2. *ibid.*
 3. P. Koschaker, 'Keilschriftrecht', *ZDMG* 89 (1935) 32.
 4. E.A. Speiser, *JAOS* Supplement 17 (1954) 15.

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Syria and Phoenicia fall within this area as is shown by the documents from Ugarit and Alalah. This situation resolves Boecker's objections as to the geographical factor, and in view of the known close relations and exchange of ideas between Israel and her neighbours it would be surprising if law and legal practice were left unaffected. Indeed, Israelite tradition records how much their legal practice was influenced by Jethro, Moses' father-in-law, who was a foreigner, a priest of Midian.

This study will utilise the abundant Mesopotamian legal material from the Old Babylonian (OB) to the Middle Assyrian (MA) period and the material from Alalah and Ugarit where relevant. The period OB-MA has been chosen for a number of reasons. It corresponds to the period of the western Akkadian texts from both levels of Alalah and from Ugarit, the detailed study of procedure is more concentrated in this period so that the legal authorities and the application of legal procedure have been more fully determined. It is remarkable, however, that the standard work for OB legal practice is still A. Walther, *Das altbabylonische Gerichtswesen*, LSS 6 (1917). This was a careful work and is still valuable but much new material has since been discovered and the work needs considerable revision in the light of this later material. Walther's work has been expanded in one particular area by J.G. Lautner, *Die richterliche Entscheidung und die Streitbeendigung im altbabylonischen Prozessrechte*, (1922), and while the work is well executed and generally reliable in its citation of texts here again many more significant texts have come to light since its publication. Walther's transliteration of texts cannot be relied upon and has, therefore, been checked and made to conform to the system of transliteration now in general use.

It is necessary in a work of this kind to limit the scope of the study chronologically and the period chosen seemed to offer the best opportunity for adducing meaningful parallels. This does not, however, rule out the use of texts from later periods, and too from the earlier Neo-Sumerian period where these illustrate the continuity of a given practice or term. For the Neo-Sumerian texts the excellent work of A. Falkenstein, *Die neusumerischen Gerichtsurkunden*, 1-3 (1956-7), is a model of its kind.

In undertaking this study the writer is aware of the many aspects which remain to be examined in depth in the sphere of the Cuneiform and Biblical law and legal systems. What fresh understanding this study has been able to bring about is due in no small measure to the patient and careful criticism of Professor D.J. Wiseman, my supervisor. His expertise in matters relating to Alalah and Ugarit in particular has been invaluable and his own interest in cuneiform and Biblical law has meant a stream of stimulating suggestions for research. To him I am most grateful for all his help and encouragement, and not least for his human understanding. I must take this opportunity too to thank Mr. M.J. Selman and Mr. J. Healey who read and criticised sections of this thesis at Prof. Wiseman's research seminars.

Mrs. G. Murray typed the manuscript and to her I am grateful for her help. Not least I owe my wife much for her patience and encouragement, and her help in typing the first draft of this thesis.

CHAPTER 1

JUDICIAL AUTHORITIES

A. The King

(i) The King as a legislator

In LH i 32-4 Hammurapi claims that he has been chosen by the gods Anum and Enlil to 'cause justice to appear in the land' (*mi-ša-ra-am i-na ma-tim a-na šu-pi-i-im*)¹. In the epilogue the same idea is expressed 'he (Hammurapi) has ensured prosperity for the people of the land for ever, and he has also maintained order in the land' (*ši-ra-am ta-ba-am a-na ni-ši a-na da-ar i-ši-im ù ma-tam uš-te-še-er*)

LH rev.XXV. 34 - 39. It is worthy of note that the prologue was not originally composed as an introduction to the laws, as Finkelstein has shown.²

From this it may be seen that Hammurapi's fame as an administrator of justice was known apart from the issue of the laws. This is borne out by the correspondence of the king with his senior officials throughout Babylonia which indicates his profound interest in the administration of justice.³

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1. *mēšaram šūpû* 'make justice appear'. *šūpû*, 'become visible, appear' is used of various types of proclamations including those of legal decisions. cf. *ša šēni u zamânê tušāpi dīnšim* 'You Šamaš proclaim the judgement on criminal and lawbreaker', *BWL* 128:58. cf. *CAD* 1², 203.
 2. J.J. Finkelstein, *JCS* 21 (1967) 42 n. 5. cf. also D.J. Wiseman, *JSS* 7 (1962) 161 ff. The O.B. tablet published by Nougayrol does, however, show that the laws were already associated with the prologue in O.B. times. cf. Finkelstein, *loc.cit.*, 48 Add.
 3. For the most recent investigation into this correspondence of W.F. Leemans, 'King Hammurapi as Judge', *Symbolae Iuridicae et Historicae Martino David Dedicatae*, II, (1968) 107 ff.

Such activity was not, however, confined to Hammurapi. He was merely carrying on a tradition which is attested as early as the laws of Ur-Nammu. The latter claims that in accordance with the "principles of equity and truth" (41 níḡ-si-sá-ni-šè 42 níḡ-gi-na-ni-šè) of Nanna he 'verily established equity in the land, and verily did banish malediction, violence and strife.'¹ (112 níḡ-si-sá 113 kalam-ma hu-mu-ni-gar 114 níḡ-erím? 115 níḡ-á-zi(?) 116 ḡiš tukul? hé-mi-gi₄.) The mention of specific violations of human rights and the King's attempt to rectify the situation links Ur-Nammu with the even earlier reform of Urukagina.² It is Gadd's contention that, "the fuller, though by no means complete, laws of Hammurapi developed out of these early attempts at price fixing coupled inevitably with legislation."³

The king, entrusted with the establishment of justice by his city god, issued *mēšarum* edicts.⁴ These were designed to rectify abuse and excess in the various areas of administration. In fact, the *mēšarum* act became a regular feature by the time of Hammurapi and this act "came to be the first in each new reign".⁵ Gadd points out that these *mēšarum* edicts were put into effect whereas there is no indication that the 'laws' were ever implemented by the courts or that they were observed in communal life.⁶

1. J.J. Finkelstein, *JCS* 22 (1969) 67.

2. S.N. Kramer, *The Sumerians*, (1963) 317ff. For a suggested new reading of the name Urukagina see W.G. Lambert, *Or. N.S.* 39 (1970) 419 who reads Uru- inim-gi-na.

3. C.J. Gadd, *CAH*³ II/4, ch. 5, 18. cf. also A. Goetze, 'The laws of Eshnunna', *AASOR* 31 (1956) 32ff.

4. F.R. Kraus, *Ein Edikt des Königs Ammi-Šaduqa*, (1958) 26. Here the expression for the establishing of justice by the issue of an edict is *mēšarum šakārum*.

5. Gadd, *op. cit.*, 22.

6. *ibid.*, 23. cf. J.J. Finkelstein, 'Amisaduqa's Edict and the Babylonian "Law Codes"', *JCS* 15 (1961) 101ff.

In contrast to the situation in Mesopotamia the monarchy in Israel was instituted only after the tribes had experienced the Exodus under Moses, and had settled in the land of Canaan under his successor Joshua. According to Phillips Israel already had a system of law closely connected with its covenant with Yahweh at Sinai.¹ The stipulations of the law were the outcome of the covenant, on the analogy of the Ancient Near Eastern suzerainty treaties.²

Phillips³ following Mendenhall⁴ regards the Exodus events as the historical basis upon which the covenant is made and sees these conditions as corresponding to the historical prologue of the Ancient Near Eastern treaties. In the treaties the king (suzerain) recalls the acts which he has accomplished on behalf of the vassal as the basis of their obligation while in the Sinai covenant Yahweh acting as suzerain recalls his bringing the people out of Egypt as the immediate basis of their obligation to him.

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1. A. Phillips, *Ancient Israel's criminal law*, (1970) 1.
 2. W. Beyerlin, *Origins and history of the oldest Sinaitic traditions*, (1965) 145ff. cf. D.J. Wiseman, *The Vassal Treaties of Esarhaddon*, (1958) 27f.; J.A. Thompson, *The Ancient Near Eastern Treaties and the Old Testament*, (1964) 14f.; D.J. McCarthy, *Treaty and covenant*, *Am. Bib.* 21 (1963) 98ff.
 3. Phillips, *op.cit.*, 1.
 4. G.E. Mendenhall 'Ancient Oriental and Biblical Law', *BA* 17 (1954) 26-46 and 'Covenant Forms in Israelite tradition', *ibid.*, 50-76.

Phillips contends that the Exodus must have been fresh in the minds of the Israelites for it to form the basis of the covenant and, therefore, since the covenant itself underlies the stipulations of the law, the law which Israel brought with her into Canaan can be attributed to Moses.¹ With the institution of the Monarchy the kings of Israel and Judah were not to introduce any new legal principle. Jackson² cites I Sam. 30, 24-5= II Chr. 19, 5ff and II Chr. 30,2 in suggesting that there Israelite kings act as legislators to introduce new principles of law. These passages do not, however, deal with new law as such. In the case of I Sam. 30, 24-5 de Vaux rightly pointed out that David was not yet king when he laid down the rule for the distribution of spoil. He was merely acting as leader of a band of marauders. His decision as commander became a custom.³ The king was, however, expected to right existing wrongs and uphold the law of Moses.⁴ II Chr. 19:4ff certainly does not indicate the introduction of new law since the express purpose of Jehoshaphat's reform was to restore practices which had fallen into disuse (וַיִּשְׁבְּטוּ אֶת יְדוֹת אֱלֹהֵי אֲבוֹתֵיהֶם II Chr. 19:4).

1. Phillips, *op.cit.*, 8.
 2. B.S. Jackson, *Theft in early Jewish law*, (1972) 151.
 3. R. de Vaux, *Ancient Israel*, E.T., (1965) 150.
 4. So Josiah read 'all the words of the book of the covenant' to the men of Judah to indicate what law he intended upholding. II Kings. 23: 1-3.

II Chr. 30:2 concerns the passover feast and again it is simply the revival of an older practice. The two 'laws of the king' (I Sam. 8, 11-18: Deut. 17: 14-20) make no allusion to the king's authority to lay down laws, indeed, the conditions of his reign indicated in I Sam. 8 prohibit arbitrary acts and those of Deut. 17 order him to have a copy of the divine law and obey it to the last detail= he is to write

אֶת מִשְׁנֵה הַתּוֹרָה הַזֹּאת 'a copy of this law' which is kept by the levitical priests and : כָּל יְמֵי הַיּוֹם 'read from it all his life'. In so doing he will learn to fear Yahweh by : לְשֹׁמֵר אֶת

כָּל-דְּבָרֵי הַתּוֹרָה הַזֹּאת וְאֵת הַחֻקִּים הָאֵלֶּה לְעֲשׂוֹתָם : 'keeping all the stipulations of this law and these statutes, and doing them'.

When Jehoshaphat placed judges in all the fortified cities of Judah he gave no new law but emphasised that they should adhere strictly to Yahweh's standard of justice in 'the fear of Yahweh' (II Chr. 19: 5-7). The principles of Yahweh's justice were contained in the "סֵפֶר תּוֹרַת י" 'book of the law of Yahweh', which principles were being taught throughout Judah (II Chr. 17:9). De Vaux argues that at no time was there such a concept as state law in Israel prior to the Exile.¹ Only under the rule of Artaxerxes was the 'law of God' imposed as 'the law of the king' (Ezra. 7:26).

The rôle of the king, in both Israel and Mesopotamia, as legislator appears chiefly to be that of *interpreting existing legal principles*. In various times and regions the king's adherence to this principle is more strongly emphasised than in others, but the principle remains.

1. De Vaux *op.cit.*, 151.

(ii) The king as judge

The narrative of II Sam. 15:1ff records the attempt by Absalom to usurp his father David's throne. Absalom begins his campaign by pointing out the inefficiency of the royal legal process. When a man came before the king for judgment Absalom would be at hand to point out that the king's burden in hearing cases was such that though his case was just he had little chance of a hearing. And further ^{שָׁמַע אֵין? הֵיאָת-הַמֶּלֶךְ} 'there is no one appointed by the king to hear you'. The similarity between this situation and that regarding Moses in Exod. 18:13ff is striking. David is exercising his function as supreme judge just as Moses had done before him.¹ And just as Moses had found the burden too great to bear alone, so David was unable to satisfy all the would-be litigants. Absalom's action is also to be viewed in the light of Exod. 18. Moses had followed Jethro's advice and appoints subordinate judges. These are the ^{שָׂרֵי אֶלְפִים שָׂרֵי מֵאוֹת שָׂרֵי חֲמֵשׁ אֲשֵׁרִים} who are to judge the people in all matters not requiring Moses' personal attention. Absalom takes fifty men as his retainers and equips himself with a chariot thus establishing himself as a military leader in the same tradition as the ^{שָׂרֵי חֲמֵשׁ אֲשֵׁרִים} of Exod. 18.² He then aspires to the position of judge and suggests that, like Moses, his father the king, has too great a burden to bear in administering justice alone. Further, he is careful to place himself on a par with the common people by refusing their homage (II Sam. 15: 5). In this way he seeks to appear as a charismatic leader and judge in the same tradition as the ^{שָׂרֵי־} of Exod. 18. and their successors the 'minor judges'.

1. Phillips, *op.cit.*, 21, "Exod. 8:13ff in the figure of Moses imagines the king himself as the supreme judicial authority".

2. Z.K. Falk, *Hebrew law in Biblical times*, (1964) 57; Phillips, *op.cit.*, 18-20.

He enquires of each man the city of his origin so that his appeal will most naturally be to those צִיָּאֲחִיז שְׁבִיטֵי יִשְׂרָאֵל who might be expected to appreciate his charismatic qualities. In this fashion Absalom "stole the heart" (גָּנַב אֶת-לֵב יִשְׂרָאֵל) or better "deceived the mind" of Israel.¹

This passage indicates the importance of the king of Israel as the dispenser of justice. It also suggests that the proper functioning of the king in his role as judge was an intrinsic part of effective kingship - by showing David's failure in this respect Absalom sought to undermine his position in the eyes of the people. A similar situation is attested in the texts from Ugarit, and Gray has pointed out the similarity to the Absalom revolt of a text in which Ysb, eldest son of King Krt, claims that his father has forfeited his throne by failure to carry out his royal responsibilities:²

44-47 You have let your hands fall into idleness; *šglt. bḡlt. ydk*
 You do not judge the cause of the widow; *ltdn. dn. almnt*
 Nor decide the case of the wretched; *ltpṭ. tṭ. qsr. nps*

52-3 Descend from your princship that I may be king *zbn. rd. lmlk.*
'amlk

From your rule that I may be enthroned *ldrktk. atbn.*

The Israelites, when they asked Samuel to appoint a king like the nations about them, asked for a king 'that he may be our judge (לְשֹׁפֵטנוּ) I Sam.

8:5. De Vaux³ pointed out that the list of David's senior officers is introduced by the words : וַיַּעֲקֹבֵן דָּוִד עַל כָּל יִשְׂרָאֵל וַיְהִי דָּוִד עֵשֶׂה אֲשֶׁפֶט

II. Sam. 8:15.

וַיִּצְדַּקְהוּ כָּל הָעָם

1. On the שָׂרִיף in detail see below p.24.
2. J. Gray, *DOTT*, (1958) 121-22; *VTS* 15 (1965) 173;
 C.H. Gordon, *UT*, (1965) No. 127.
3. De Vaux, *op.cit.*, 151 f.

In a similar way the list of chief Solomonic officials is immediately preceded by the account of a judgment by the king involving particular discernment. On account of this case the comment is appended:

וַיִּשְׁמְעוּ כָּל יִשְׂרָאֵל אֶת הַמִּשְׁפָּט אֲשֶׁר שָׁפַט הַמֶּלֶךְ כִּי הִכְמִיט אֱלֹהִים בְּרוּחוֹ
 לְעֵשֶׂת מִשְׁפָּט :
 'And all Israel heard the judgment which the king gave.....
 for the wisdom of God was in him to give judgment.' I Kings 3:28.

From a consideration of the type of cases brought before Israelite kings it is not possible to arrive at categories of law suits reserved either for the king or subordinate authorities. Nathan brings the issue of sheep stealing before David, albeit a fictitious case, and the king gives sentence (II Sam. 12:6). Solomon gives a shrewd sentence in the case of ownership of a baby (I Kings 3:16-28) and the woman from Tekoa appeals to the king to intervene in a family blood feud (II Sam. 14:4-11). It has been shown above how David's administration of justice was strikingly similar to that of Moses prior to his contact with Jethro and this indicates that at this period at least access to the king was possible, even if it was long delayed, in suits of a quite trivial nature. There is little evidence for the period after David and Solomon but there does exist the case of the Shunammite woman who, having returned from exile in Philistia, 'appealed to the king'

(צַעֲקָה אֶל הַמֶּלֶךְ) for her house and land (וְשָׂדֵה וְבֵיתָה , II Kings 8:3)
 to be returned and had the request granted upon verification of the facts. This depicts the royal interest in land tenure and the king's ability to grant tenure under certain conditions.

De Vaux thinks that the system of local judges backed up by a central tribunal at Jerusalem instituted by Jehoshaphat (II Chr. 19:4-11) meant that the king was relieved of his office as supreme judge.¹

1. *op.cit.*, 154.

This, however, is nowhere stated and since no cases are recorded in which the king could conceivably have been involved there seems no basis for the assumption. On the contrary, the tradition of the king as the 'judge of Israel' remained very much alive. As de Vaux himself admits¹ the most likely interpretation of Mich. 4:14 is that the 'judge' (שֹׁפֵט מֶלֶךְ) is the king, so that even in the time of Micah the king was still regarded as supreme judge.²

The evidence available for the king's part in Mesopotamian administration of justice is much more extensive than that recorded in the O T. The picture of royal activity is a varied one.³ Lautner⁴ and Jacobsen⁵ contended that Hammurabi and other Mesopotamian kings did not actually try cases themselves but merely examined the documents in a case and then delegated it to a subordinate authority. This view has been challenged by Leemans⁶ who has utilised new material to show that the king did try cases himself as well as delegating other cases to subordinate authorities.

1. *op.cit.*
2. *cf.* also the prophecy of Isaiah 9:6 depicting the king, the perfect ruler, as upholding his throne in justice and righteousness.
(שֹׁפֵט מֶלֶךְ, נִקְרָא). *cf.* also Isa. 42:4.
3. A Walther, *Das altbabylonische Gerichtswesen*, LSS VI 4-6 (1917) 100.
4. J.G. Lautner *Die richterliche Entscheidung und die Streitbeendigung im altbabylonischen Prozessrecht*, (1922) 74 ff.
5. Th. Jacobsen, *JNES* 2. (1943) 162.
6. 'King Hammurapi as judge', *Symbolae Juridicae et Historicae Martino David Dedicatae*, Vol. II.

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According to Leemans a case brought before the king could be investigated and judged in three different ways:

1. The king tried the case himself and gave final judgment.
2. The king gave a decision on a point of law and remitted the case to the local judges or authorities for a decision on questions of fact.
3. The king remitted the entire case to local judges.¹

This varied picture based largely on the letters of Hammurapi agrees with that painted by Walther. A wide variety of cases are brought before the king. A case of suspected murder (CT 29: 41-43),² failure to pay back a loan (AbB 2;24), bribery among officials (AbB 2; 11), but most of all numerous cases of dispute over land sale or tenure. This situation is no accident of archaeology, for the king had a special responsibility for, and interest in, land tenure and sale.³

(iii) Types of cases heard by the king,

(a) The crown and land tenure.

The king's particular interest in and responsibility for law is emphasised in a study of land tenure in the Middle Assyrian period by J.N. Postgate who sets out to show "that all land was held as a concession from the crown in return for the performance of *ilku* obligations"⁴. Postgate argues that all land was held as a concession from the king and was liable to revert to him when no member of the family to which the concession was made survived. He cites Tablet A^H 45 of the MA Laws as evidence of this.

1. *loc. cit.*, 110.

2. Lautner, *op. cit.*, 84.

3. S.D. Walters, *Water for Larsa*, (1970) 144.

4. J.N. Postgate, 'Land tenure in the Middle Assyrian period: a reconstruction', *BSOAS* 34 (1971) 476.

Here a man leaves his wife destitute and goes off. Postgate suggests that the land is sold by the judges at the woman's request and the money given to her as maintenance.¹ If the man returns he may repurchase his property. Lines 85-8 prescribe that if the man does not return then the king may give the property to whoever he will (*AŠA-šū u É-su a-šar LUGAL id-du-nu-ú-ni i-id-dan*). Because he argues that this last statement appears to contradict the previous statement that the property is to have been sold off "for full price" to a third party (*ana šim gamer nadānu*),² and there is nothing to indicate that this sale was less permanent than an ordinary sale, Postgate suggests that all land when sold was not held outright by the purchaser, but, under certain conditions, was also liable to revert to the king. Postgate assumes that the fact that it had been sold to a third party (*ana kīdi*) does not affect this; once the concession lapses the grant is automatically cancelled, whoever may be holding the field at that moment. Postgate seems to insist that the king actually 'gave' the land in return for *ilku* services but he himself stresses in another work that "the verb for 'sell' and 'give' in Assyrian is *nadānu*, so that it is quite a close parallelism. In fact, in one case the lines preserved so resemble an ordinary land sale, that it is possible that it is not a grant but a sale of land by the king (No. 17; cf. No. 5)".³

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1. Cardascia, *Les lois assyriennes*, (1969) suggests at this point that the land is not sold but merely rented. However, Postgate appears to be right in suggesting that the land is sold.
 2. This is the phrase used in an ordinary sale.
 3. J.N. Postgate, *Neo-Assyrian royal grants and decrees*, Studia Pohl, Series Maior 1, (1969) 2. Despite the time gap the conservative nature of these transactions make comparison possible.

Even in the former study Postgate has to concede that the purchaser of the field may not go entirely without compensation for his loss - when the king gives the field he may do no more than concede the rights of tenure, while the monetary value of the land could be subject to different arrangements.¹ Just such a situation is recorded in a kudurru inscription. The transaction is simply a sale of a piece of land in return for a list of various goods carried out between two individuals. In enumerating the curses against anyone seeking to upset the transaction curses are called down upon anyone who says A. *ŠA meš ul ni-di-it-ti LUGAL-ma* "the lands were not the gift of the king." Here the gift of the king simply means that the king consented to the transaction. Postgate gives instances of tablets being sold where the seller does not yet have the right to dispose of the property but deposits the deeds confirming eventual right to it in the house of the creditor as security. When he gains the land he will sell it to the creditor and no one else.² Here the seller is in obvious financial need and it is possible that what is holding up the transaction is royal approval for the sale. Driver-Miles point out that the prohibition of sale or exchange in the Old Babylonian period "is clearly a protection of the tenant against his creditors to prevent him from being reduced to penury, which would be contrary to public policy."³

1. *BSOAS* 34 (1971) 508.

2. Postgate, *BSOAS* 34 (1971) 511.

3. Driver-Miles, *BL*, I, 126. R. Harris, *JCS* 9 (1955) 97, cites a text from Khafajah (Kh. 1935, 121) in which a certain Kalarum was permitted to sell his field under duress but he, and not the buyer, was obliged to perform the *dikûtum* duties attached to the field. Harris shows that *dikûtam alākum* is synonymous with *ilkam alākum* of LH 27-31.

This may be the reason why the *rēdūm*, the *bārūm* and the *nāsi biltam* may not sell their properties (LH 36-8) and anyone who buys their fields will forfeit his money. It may be that the royal approval will not be given, *ie.* the king will not give (*nadānu*) the field to the purchaser, so that his tablet is void. This does not apply to the *nadītum* the *tankārum* or other field holders, for they are less likely to be selling their fields out of hardship. But there is another reason for these prohibitions in as much as the king would be unwilling to have as tenants men whom he did not himself choose and who might be disloyal. In letters of the Hammurapi period (Thureau-Dangin, *RA*, xxi 39:34, 51:17, 53:15, 56:20) there is occasional reference to the character of the proposed tenant.¹

Many of the legal texts from Ugarit involve the king giving (*nadānu*) land and Nowgayrol in PRU III, IV & VI has placed these in the category of 'don royal'.² These are not royal grants so much as royally approved transactions as proposed in the document.

AbB 4:37 (=TCL 7 37) is a case of appeal to Hammurapi on the strength of a tablet which the king had written ascribing a field to some basket makers (*lu' edikū meš*). The field was being forceably exchanged for another by *Samaš-Ḥašir* the royal official. It may be argued here that the tablet in question was one of royal approval.

An illuminating case at Ugarit is RS 16:249.³ Here some men have made a copy of the king's great seal and have been banished. Their offence, however, seems to have involved one Kalbeya for they are forbidden to raise a claim against him or his offspring concerning the property mentioned.

1. Driver-Miles, *BL*, I, 126.

2. Eg., RS. 16. 150 (*PRU III*, 47); 16.166.

3. *PRU*, III, 96.

The offence must be that these forgers attempted to use the royal seal to forge a *nadānu* tablet and so lay claim to the property of Kalbeya by making it appear that the king had authorised a sale. This is borne out by the fact that Niqmepa is at pains to stress that he had given the property to Kalbeya and that Kalbeya's father also had given him the property (*ištēn^{en}-šū^Iša-i-ya abu-šū-ma id-din-šū-nu ù ša-na-am niq-me-pa šarru id-din-šū*) R.S. 16.249, 7-9. (PRU, III, 96).

Postgate is right in suggesting that all property owed an obligation to the crown but while some *nadānu* tablets may represent concessions of land for services rendered the overwhelming majority represent royal authorisation for sales or transfer in which the royal interest was invariably involved. This situation in which the king is custodian of the land for the god stems from the replacement of the temple by the palace as the dominant economic factor in the country.¹ The fact that the Shunammite woman had to appeal to the king for the return of her land may indicate the influence of Mesopotamian-Canaanite practices on Israel.

(b) Other types of cases heard by the king

Apart from the transfer of land and cases of corruption in royal officials (see p. 46 for bribery case) there is no clear indication of what type of case normally came to the king's notice. In LE[#]48 it is laid down that cases involving a penalty of between 20-60 shekels was assigned to a tribunal (text broken ...), but a matter of life (*awat napištim*) was reserved for the king's judgment.

1. R. Clay, *The tenure of land in Babylonia and Assyria*, (1938) 11-12.

Nothing comparable occurs in any other cuneiform collection of laws.¹
 The term *awat napistim* is often translated 'capital case' but this is uncertain. The text of ARM VIII 1 shows that a sum of 200 shekels was imposed as *kasap dīn napistim*. This implies that not all cases termed *awat napistim* necessarily ended in the death sentence. Indeed not all cases carrying a possible death sentence were tried by the king.²

It is not always clear how claimants or defendants had their cases heard by the king. SMN 3083 is a letter sent by the judges to the *sukkallu* ('vizier') stating that a defendant had appealed to the king by taking the 'oath of the king' during his lawsuit, and requesting that the letter be brought to the attention of the king.³ JEN 321 on the other hand, is the record of proceedings carried out before judges, (*ina dīni ana pāni dayyānē meš*) during which the plaintiff states that he had appealed to the king (*a-na LUGAL uš-tu-he-hi-in*). It seems, therefore, that the king had referred this case to the judges who then proceeded to collect evidence.⁴

1. R. Yaron, *The laws of Eshnunna*, (1969) 77; V. Korošec, 'Keilschriftrecht', *Handbuch der Orient. Abt. 1, Band VIII, Ergänzungsband III*, (1964) 90.
 2. A murder case at Larsa in the 31st year of Rim-Sin was judged by the judges in the gate of Ninmar. cf. Landsberger, *ZA* 43 (1936) 315.
 3. cf. Hayden, *op.cit.*, 9.
 4. cf. for this evidence the related documents, JEN 135; 184 and cf. for the background, JEN 512; 325; 644 and 388.

.....
B. The Judges

(i) Royal Judges

The king was obviously not able to deal in person with every case which might require intervention by the ~~supreme~~ judge. Judges are attested in Mesopotamia as early as the time of Sargon (c. 2370 BC).¹ It has been argued by Harris that the judges of the period prior to Hammurapi were appointed by and functioned in the temple. Not until there was a process of secularisation under Hammurapi, designed to strengthen the king's position, did judges come to be royal officials in Babylon.²

Harris notes the occurrence of the title *dayyānū šarrim* 'judges of the king' earlier, in the reign of Sabium but argues that it only came into prominence at the time of Hammurapi.³ The pre-Hammurapi cases which Harris cites in her study involve *nadītum* women so that these can hardly be taken as representative of legal proceedings in general. Driver⁴ points out that the fact that the judges held court in the temple is not conclusive evidence as to their position within the judicial system. It may simply be that the *dayyānum* of the temple (*dayyānū ša bīt^d Samaš*; *dayyānū gagim* etc.) was a judge who, for convenience in administering oaths, held court there.

1. D. Edzard, *Die altorientalischen Reiche, I* (Fischer Weltgeschichte, Vol. II), 89.
2. R. Harris, *JCS* 15 (1961), 117; Noted also by M. Schorr, *Urkunden*, 339f; E. Cuq, *NRH* 33 (1909) 399ff., and Driver-Miles, *BL, I*, 491.
3. *op. cit.*, 119.
4. *BL, I*, 491.

Such a conclusion is supported by texts published by Walters¹ in which the king, Samuel, acted as judge, 'the king settled the matter' (lugal-e in-na-ab-gi₄-gi₄) at the 'gate of Samas the judge' (ka^d UTU-še di-kuru₅ Walters No. 24: 7-8). The judges also acted in the same setting in this pre-Hammurapi period *i-na ba-ab^d UTU ma-ha-ar da-a-ni* 'in the gate of Sams before the judges' (Walters No. 96: 10-11). The same correspondence, however, indicates that secular judges were much more common than Harris allows in the period prior to Hammurapi and that these judges were answerable to the king.

The archive deals with irrigation systems and presents a picture of Samuel, the king, as deeply concerned with economic justice and his subordinate officials responsible for maintaining irrigation systems acting as judges passing their decisions to the king for approval.² In view of this it is important not to overestimate the effect of secularisation upon the judiciary under Hammurapi. Administration of justice was, for certain types of cases, already in the hands of royal appointees.³

The existence of royal judges is not attested till relatively late in the period of Hebrew monarchy. With David the complaint levelled against him by Absalom was that: : ׀׀׀׀ ׀׀׀׀ ׀׀׀׀ ׀׀׀׀
 II Sam. 15:3 'there is no one deputed for you by the king' and that he himself could not hope to hear all the cases.

1. S.D. Walters, *Water for Larsa*, (1970) 26 #124.
 2. *op.cit.*, 159.
 3. Note that these cases deal with land and its control.
 cf. above pp. 16-20.

De Vaux contends that the judge mentioned in Deut. 17:9 who functions at: 24
: אשר יבחר יהוה אלהיך בו 'the place which Yahweh your God shall choose; is not the king, as at Mich. 4:14, but an official appointed by the king.¹ De Vaux sees in the Deuteronomy passage mention of the same institution as was set up by Jehoshaphat and which is mentioned in II Chr. 19: 4-11.² There is no reason to suspect the historical accuracy of the text of Chronicles here³ though the narrative may reflect special interests of the time of the Chronicler.⁴ The Chronicler's account, however, implies that Jehoshaphat was reconstituting a system which, as will be shown, disintegrated under the monarchy. The system of administration of justice envisaged by the Deuteronomy passages will be discussed in the section which follows.

(ii) The local judges

In urban society judges were a feature of the Mesopotamian legal organisation but they had, as has been demonstrated above, been under royal control since the beginning of documentation of lawsuits. From the records available it is not possible to determine accurately the social position of the local judge in Mesopotamia. On the other hand Hittite records make it clear that the local militia commander had a judicial function and it will be shown that the local Israelite judges too were military personnel, at least in the days prior to the monarchy. Having determined the position of the Hebrew local judges a suggestion will be offered as to the position of the local judges in Mesopotamia in relation to the local assembly.

1. *Ancient Israel.*, 153.

2. *op.cit.*, 154.

3. W.F. Albright, *Marx Jubilee Vol.*, 61-82; Phillips, *op.cit.*, 18.

4. De Vaux, *op.cit.*, 154.

In Exod. 18:13ff the text purports to show how the earliest system for administering justice in Israel came into being. It envisages Moses as a supreme judge to whom the most difficult of legal problems could be referred by a number of subordinate judges. These men are selected for their personal qualities and are designated שְׂרֵי צֹאֵן, שְׂרֵי אֶלְפִים, שְׂרֵי עֶשְׂרֹת, שְׂרֵי חֲמֵשִׁים (Exod. 18:21), which are military titles.¹ McKenzie points out that the tribes would have been organised in military units even in non-military affairs, and so the שְׂרֵי would be 'the military of tribal, clan, or village units, comparable to the Greek *strategos*.² Phillips³ and Von Rad⁴ follow Knierem⁵ in seeing in Exod. 18:13ff. 'an aetiological account intended to justify a system for the administration of justice at some specific point in Israel's history. By its reference to the levy and use of the שְׂרֵי (Exod. 18:21, 25) this must be Jehoshaphat's reorganisation of justice on a military footing.'⁶

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1. J. Van der Ploeg *RB*. 57 (1950) 40-41; J.L. McKenzie, *Biblica*. 40 (1959) 528; G.F. Moore, *Judges*, ICC (1895) 224.
 2. McKenzie, *loc.cit.*, 528.
 3. *op.cit.*, 19.
 4. Von Rad, *Deuteronomy*, 39.
 5. R. Knierem, *ZAW* 73 (1961) 146ff.
 6. Phillips, *op.cit.*, 19; cf. Knierem, *loc.cit.*, 146ff.

The account in Exod. 18 preserves some features which do not accord well with the situation in Jehoshaphat's time and Noth has well observed that the derivation of the ordering of justice from a priest of Midian suggests that the present tradition may have arisen at an early period, in which there were good relations between the southern Israelite tribes and the Midianites.¹ He suggests that the period in question is soon after the settlement and that Moses' function is played by the judges of Israel (Judg. 10:1-5; 12:7-15).²

Noth's suggestion raises the vexed question of defining the function of the judges of Israel. According to Alt they had a legal function and were responsible in their handling of the law for assimilating Canaanite customary law.³ Noth follows Alt in attributing to the 'minor judges' a function at the central sanctuary of interpreting the law, he differs, however in distinguishing between these 'minor judges' and the 'major Judges' or charismatic leaders in war.⁴ It is from the fact that no reference is made to military campaigns of the 'minor judges' that Alt concludes that their duties were restricted to the legal sphere.⁵ From a study of the stem $\check{s}pt$ in Hebrew and other Semitic languages Grether concludes that it can only have the meaning 'judge' or 'decide'.⁶

1. Noth, *Exodus*, 150.

2. *ibid.*

3. A. Alt, *Kleine Schriften*, I, 300-302.

4. M. Noth, *Festschrift Bertholet*, (1950) 404-17; *Geschichte Israels*, (1954) 98f.

5. Alt, *Kleine Schriften*, I, 300.

6. O. Grether, *ZAW* 57 (1945) 110ff.

This conclusion leads him to assume that the term שֹׁפֵט was applied to the charismatic leaders wrongly by writers of a later time.¹

A similar conclusion is arrived at by Van Selms regarding the application of the term שֹׁפֵט to the charismatic leaders but he argues against the validity of its application even to the 'minor judges'.² He points out that one of the 'minor judges', Tōla (Judg. 10:1), who is accepted as such by Noth is explicitly said to have risen to deliver Israel :

$\text{וַיִּקְרָא אַחֲרָי אֲבִי מִצֵּדָה לְהוֹשִׁיעַ אֶת יִשְׂרָאֵל מִיַּד תּוֹלַע}$
(Judg. 10:1).³

Both Van Selms and Grether investigate the term שֹׁפֵט in Hebrew and the stem špṭ in other Semitic languages. Grether overlooks the Phoenician and Punic material but Van Selms bases his argument almost completely on this. Fensham argues against them both that the stem špṭ has a double meaning of 'to judge' but also 'to govern'.⁴ He bases this argument mainly on Ugaritic texts and Akkadian texts from Mari. He fails, however, to show conclusively that the root can have a double meaning. The texts in question are few and open to more than one interpretation. Van Selms' arguments are not any stronger. He is at a loss to find a link between the late Phoenician and Punic inscriptions which show the špṭ as a temporary ruler and the time of the judges of Israel. His attempt to show a 'revolutionary movement in Ekron in Sennacherib's time'⁵ must be discounted in view of the fact that such structures in city government were the norm in Mesopotamia.⁶

1. *ibid.*, 120.

2. A. Van Selms, *OTWSA* 2-5 (1959) 41ff. *cf.* W. Richter, *ZAW* 77 (1965).

3. *ibid.*, 20.

4. F.C. Fensham, *OTWSA* 2-5 (1959) 15ff.

5. Van Selms, *loc.cit.*, 47f.

6. *cf.* T. Jacobsen, *JNES* 2 (1943) 166.

The difficulties which scholars note in the use of the term as applied to the 'judges of Israel' is that the term is quite clearly used in Biblical Hebrew to indicate a judicial function. This שֹׁפֵט function is seen to be difficult to apply to the charismatic leaders who, apart from Deborah, are not seen acting in a judicial capacity. In fact, the minor judges are not depicted as acting in this way either and it is doubtful if a distinction should be made between 'major' and 'minor' judges.

The term שָׂרֵי indicates a person who is in a position to command¹ and in Exodus 18 it is further defined by a numeral in the genitive. This indicates that the men appointed by Moses were to be military officers.² The narrative make it clear that they are chosen for their

personal qualities: תַּחֲזֹק מִכָּפַל הָעַם אֲנָשֵׁי חַיִל יִרְאֵי אֱלֹהִים אֲנָשֵׁי אֱמֶת שֹׂנְאֵי בַצַּע וְשֹׂנְאֵי עֲצָהּ שָׂרֵי אֲלָפִים שָׂרֵי מֵאוֹת שָׂרֵי חֲמִשִּׁים וְשָׂרֵי עֶשְׂרֹת: וְשֹׁפְטֵי אֲמֹנִים וְגו'

"Choose from all the people men of valour who fear God, hate a bribe and are truthful and appoint them over them (the people) as leaders of thousands, hundreds, fifties and tens. They shall judge the people" Exod. 18:21. According to McKenzie Israel was organised in military units for non-military affairs³ and while this is probable in the light of other Ancient near Eastern societies it must remain somewhat speculative.

1. Van der Ploeg, *RB* 57 (1950) 40f.
 2. J.L. McKenzie, *Biblica* 40 (1959) 528; Phillips, *op.cit.*, 19 ; Knierem, *loc.cit.*, 146ff.
 3. McKenzie, *loc.cit.*, 528.

The Hittites had a system of local administration similar to that of the Hebrews. Gurney says "the elders are the governing body of a city, the town council, with whom provincial governors on tour are required to collaborate in judicial and other affairs."¹ The elders were expected to co-operate with the local garrison commander and *vice-versa* and together they sat in judgment on disputes.² This is very similar to the situation envisaged in Exod. 18 and, following Noth's suggestion of an early date for this passage, it is not unreasonable to envisage a similar system in operation during the Judges period. Thus the country had a system of local military leaders who by virtue of their personal qualities also exercised the function of judge. The 'major judges' all come to the fore (קִיָּם) as a result of a specific deliverance they effect for a section of the federation.

As Albright has pointed out, "It was thus no light honor when a successful military leader or popular hero was consulted by his followers, to whom physical prowess and shrewdness in strategy carried with them social prestige and reputation for wisdom".³ When these men brought about a great military feat they most naturally fell into the role of the שֹׁפֵט appointed by Moses and since Moses and Joshua were dead the 'Judge of Israel' who replaced them was the man who rose (קָם) to prominence by virtue of his military prowess and charismatic qualities. While his military activities might have had consequence for only a part of the nation the judge would rise to become 'Judge of Israel' when all heard of his charisma. It is striking that no definite military achievements are mentioned for the 'minor judges' but this need not mean that they did not in fact have any.

1. O.R. Gurney, *The Hittites*, (1952) 68-69.

2. *ibid.*, 92-93.

3. W.F. Albright, *From the stoneage to Christianity*, 21.

As was pointed out above Tola who is a minor judge delivered

(הוֹשִׁיעַ) Israel (Judg. 10:1). Phillips points out that the judicial authority of the 'judge of Israel' was inherited by the monarch.¹

This situation is well reflected much later in the prophet Micha's time when the 'judge of Israel' is smitten with a rod on the cheek' (Mich. 4:14). This represents the final humiliation of the nation and clearly refers to the king as inheritor of the tradition of judge and charismatic military leader. The opening verse of Ch. 5 strikes a note of hope and refers to the same tradition of charismatic leadership of the judges.

וְאַתָּה בֵּית-זֶהוּ אֶפְרַתָּה צְעִיר זְקֵיאוֹת בְּאֶלְפֵי
יְהוּדָה מִצֶּדֶד זֵי יֵצֵא זְקֵיאוֹת מִוֶּשֶׁל בְּיִשְׂרָאֵל וְגו'

"But you Bethlehem Ephratah, little among the families of Judah, from you he shall come forth for me who is to be ruler in Israel....."

Here the local nature of the military commander is preserved and emphasised. Any of the local militia leaders might rise to become 'Judge of Israel'.

It is worth noticing that the 'minor judges' of Judg. 10:1-5 and Judg. 12:8-15 have sons and grandsons who ride on asses. This is not mentioned in order to stress their wealth but the peaceful nature of their judgeship,² a peace broken by the expression:

וַיַּעַשׂוּ יִשְׂרָאֵל עֲוֹנוֹת וַיִּשְׁכַּח אֱלֹהֵיהֶם
'And the people of Israel again did evil

in the sight of Yahweh' Judg. 10:6; 13:1. The riding of asses, signifying peace, contrasts markedly with Absalom's behaviour in taking a chariot and fifty followers to signify crisis and his own judge-like qualities.

1. *op.cit.*, 21.

2. This of course do not rule out military activity at the beginning of their judgeship.

It has been shown above (p.10 ff.) that the system of "judges" arising as charismatic leaders had broken down prior to the rise of the monarchy and this is already indicated in the final chapters of the book of Judges. Two incidents are recorded which indicate the lawless condition of the country, Judg. 17-18 tell of the migration of the tribe of Dan and their encounter with Micah, his priest and his silver idol. Judg. 19-21 relate the gruesome story of the death of a concubine at the hands of the men of Gibeah and the consequent battles. Both these incidents are recorded to illustrate conditions in the country as the system of charismatic leadership of the "judges" began to disintegrate. This is summed up in the phrase found to

introduce both anarchic situations; בימים ההם ומלך אין בישראל

'In those days there was no king in Israel' (Judg. 17:6, 18:1, 19:1)

and in the final verse of the book; בימים ההם אין מלך בישראל איש הישר

'In those days there was no king in Israel and every man did as he saw fit'. Judg. 21:25. It is in the light of this state of near

anarchy that the early Chapters of the book of Samuel are to be viewed. The focus of attention is the sanctuary at Shiloh, not now the villages and towns from which the judges arose earlier. It is said in I Sam. 4:18 that Eli had judged Israel forty years when he died.¹ Samuel is pictured as growing in favour with God and man and all Israel note the fact that Samuel 'was established as a prophet of Yahweh' I Sam. 3:20

(לְנָבִיא לַיהוָה). With Eli's death Samuel gathered Israel at Mizpah and "judges Israel" (וַיִּשְׁפֹּט שָׁמַיִם אֶת בְּנֵי יִשְׂרָאֵל I Sam 7:6)

and God gave them a victory over the Philistines.

1. It is not quite accurate to say with Smith (*ICC., Samuel, 36*) that the phrase 'Eli judged Israel forty years' was designed to bring Eli into the same class with the judges of the book of Judges. In fact he was in a different class, *ie.* a priest as opposed to a soldier, though at this stage he was called upon to exercise judicial functions.

It is noticeable that Samuel, unlike the charismatic leaders who "judged" Israel, took no part in the actual battle; the emphasis is on the fact that God intervened on Israel's behalf

וַיִּרְעַם יְהוָה
בְּקוֹל גְּדוֹל בַּיּוֹם הַהוּא עַל-פְּלִשְׁתִּים :

'but the Lord thundered with a strong voice against the Philistines'

I Sam. 7:10. Having been the mediator of this great victory, even

though not precisely in the manner of the 'judges', Samuel became

established as 'the judge of Israel' and travelled about the land

visiting the chief sanctuary sites of Bethel, Gilgal and Mizpah¹

dispensing justice to Israel and for the rest of the time having disputes

brought to him at his home in Ramah I Sam. 7:15-17. The pattern conforms

fairly well to that established for the 'judges' who arose as military

leaders with the significant difference that the office of 'judge', while

it still demanded certain attributes of wisdom and morality in the

candidate, had become associated with the sanctuary at Shiloh and the

'judge' was no longer a participant in the military activities involved

in securing deliverance.²

1. All these, as de Vaux pointed out (*op. cit.*, 154), were sanctuaries as, was Beersheba where Samuel's sons were appointed to be judges

(I Sam. 8:2).

2. It is not possible here to dwell on the development of the prophetic movement in Israel but the passages discussed above may well be highly significant. The 8th cent. prophets were closely associated with the

'holy war' while not actually participating and here in the case of

Samuel there is a transition from 'charismatic leader - judge' to

'prophet' (נְבִיא). The editor of I Sam. 9:9 is at pains to show that

Samuel was more than a local seer (רֵאָה) but was a prophet (נְבִיא).

I Sam. 3:20 indicates that when he became recognised as נְבִיא Samuel

was able to give direction to Israel (וַיִּדְבֹר שְׁמַעְיָא לְכָל-יִשְׂרָאֵל 3:20). In

monarchical times the prophets kept alive the charismatic tradition

following Samuel. cf. Von Rad, *Theology*, II, 149.

Samuel's judgeship was peripathetic and it is not possible to say whether or not this was an innovation in Israel for the actual administration of justice by the 'judges' is not well documented. What is clear is that Samuel was more than a 'circuit judge' for he had a base in his home town of Ramah from which he dispensed justice. This latter practice is at least likely to be true of the 'judges' who were associated with specific towns.

Walters¹ attempted to show that Irra-bani was an itinerant judge in the same style as Samuel, and while his arguments are not completely convincing they do merit consideration. In BIN 7, 51:13 Irra-bani is sitting (*wasib*) judging disputes probably connected with canal labour. BIN 7, 45:4-5 indicates that he was called upon to revise some boundaries because of violations of some sort regarding a merchants' silver. He says: *ištu U₄-5-kam a-na na-ri-im qa-ti sa-ak-na-at a-šū-um aš-ku-nu li-ba-ti-ya ma-lu-ú.* 'Five days ago I began at the canal. Because I began, they became angry at me.' BIN 7, 45:4-7. Whether or not this last text indicates that Irra-bani actually judged the dispute at some remote area is not really clear.

(iii) The bench of judges

In Mesopotamia judges are usually mentioned in the plural.² LH[#]5 indicates that the wayward judge mentioned there is banned from 'sitting with the judges' (*itti dayyānī*) at a trial. At Nuzi there is specific reference (JEN 138) to a judge, Alkitilla, refusing to give a decision because there was no other judge present at the hearing.³

1. Walters, *op.cit.*, 159.

2. Driver-miles, *BL*, I, 491; *AL*, 338.

3. Hayden, *Court procedure*, 170-71; Text and translation C.H. Gordon, *Or.* 5 (1936) 320-21.

In the few instances where one judge only is mentioned Driver is probably right in thinking that he is the president of the court.¹

In some cases documents mention a single judge but subsequently mention is made of a plurality judges (HG III 659:5-6 VI 1755:5-6, 1756:7-8).²

Israel under the monarchy had a bench of judges, a final court of appeal (Deut. 17:8-13). Deut. 16:18-20 reflects a similar situation to that outlined in II Chr. 19:4-11 where the system set up by Jehoshaphat involved not only the appointment of judges 'in every walled town'

but a tribunal at Jerusalem. This tribunal was composed of: **הַלְוִיִּם**

וְהַכֹּהֲנִים וְרֹאשֵׁי הָאֲבוֹת צִיְשָׁאָז לְמִשְׁפַּחַת יִשְׂרָאֵל וְלִכְתֹּבֵי יְרֻשָׁתָם :

'some of the Levites, the priests, and the heads of families of Israel, to give judgement for Yahweh and settle disputes. They sat at Jerusalem'. It is made clear in V. 11 that they are not all to

function as judges but the Levites are to be **שֹׁטְרִים** 'clerks'

to the high priest and the **בְּגֵיד צִיְאָה יְהוָה**. Whether or not the last two both functioned as judges it is not possible to say but Deut.

19:17ff indicates that the priests and judges are to be distinguished:

וְעַמְדוּ שְׁנֵי הַצֹּדֵקִים אֶת צִדְקַת הָרִיב לְפָנֵי יְהוָה לְפָנֵי הַכֹּהֲנִים וְהַשֹּׁפְטִים אֲשֶׁר יִהְיוּ בְיַמֵּי הָהֵם :

'The two men who have a dispute shall stand before Yahweh before the priests and the judges who shall be in those times' and Deut. 17:12 similarly distinguishes them. From the fact that Deut. 19:18 states

that the investigation was carried out by the judges: **וְצִדְקָתָם יִשְׁפֹּט הַיֹּדֵעַ**

'the judges shall investigate thoroughly', it may be that the judges called upon the priests to enquire of Yahweh. Whether or not the priests functioned as judges in their own right is not certain, though there is

1. BLI, 77, n.1; AL, 338 n. 6.
2. cf. de Vaux's comments on Deut. 27:8-13 *op.cit.*, 153.

no evidence to suggest that they did so at this stage in Israelite history.¹

The question of local tribunals will be dealt with in the next section.

C. The Local Assembly

Criminal action within a geographical area was regarded as being the responsibility of the local authorities and it was left up to them to rectify the wrong done, in a suitable manner.² A clear example of this at Nuzi is found in *JEN* IV 337:1-32. Tarmitilla 'took the men of the city' (LU.MEŠ URU) to court where he charged that his ass had been attacked and killed in the street. The testimony of the 'men' is badly preserved but the final part of their statement reads [la n]i-te-mi šum-ma i-na GIR ha-du-um-ma³ DÜ-uš (i-tepus^{us}) 'we do not know whether he killed (the stolen donkey?) with a dagger'. He won his case and was granted compensation.⁴

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1. On the question of the historicity of the Chronicles account
cf. W.F. Albright, 'The Judicial reform of Jehoshaphat',
A. Marx Jubilee Volume, 61-82.
 2. *BL*, I, 110; Phillips, *op.cit.*, 17; C.H. Gordon, *RA* 31 (1936) 1ff.
 3. *hadu* occurs only in this text and in the phrase *hadumma epēsu*
'to kill'. The word is, according to *CAD* 6, 24b, a Hurrian loanword.
 4. For comment cf. Hayden, *op.cit.*, 146.

This situation is envisaged in LH[#]23 and 24:- *šum-ma ha-ab-ba-tum
la it-ta-aš-ba-at a-wi-lum ha-ab-tum mi-im-ma-šu hal-qá-am ma-ha-ar
i-lim ú-ba-ar-ma URU ú ra-bi-a-nu-um ša i-na ir-ši-ti-šu-nu ú
pa-ti-šu-nu hu-ub-tum ih-ha-ab-tu mi-im-ma-šu hal-qá-am i-ri-ab-bu-šum.*

'If the thief is not detained the man who was robbed shall prove before a god what he has lost and the city and the mayor in whose territory or district the robbery occurred shall replace whatever was stolen from him'. LH[#]23. LH[#]24 goes on to stipulate compensation payment of one maneh of silver by the city and the mayor for the victims relations (*nišišu*) in the event of loss of life (*napištum*). This responsibility of the local authorities is seen for the Hebrews in Deut. 21:1 where the local elders and judges are responsible for expiating the murder by an unknown assailant.

This responsibility for crime points to the local authorities concern for the maintenance of justice in their region. What needs to be determined is the composition of the local judicial body, which is represented by a number of terms, and its competence as a judicial authority.

(i) The composition and competence of the local assembly

(a) Its competence

Jacobsen, in a fundamental study of the Mesopotamian assembly¹, pointed out the decline in importance of the assembly from being a policy making body in times 'just beyond the borders of history proper' to becoming a judicial assembly in Old Assyrian and Old Babylonian times.²

1. T. Jacobsen, *JNES* 2 (1943) 159ff.

2. cf. G. Evans, *JAOS* 78 (1958) 4.

This work is not concerned with the earlier political power of the assembly but with that vestige of its authority which allowed it to function as a democratic judicial body despite the contemporary pressures towards despotism. It is worth observing, however, that Jacobsen in his description of the divine assembly as a projection of the earthly assembly fails to note that this divine assembly existed as a judicial body alongside Šamaš, the judge. Šamaš' function as god of justice, the righteous judge, is attested by use in a personal name in the Fara texts (Early Dynastic III).¹ The Old Babylonian judge sat with the assembly in his official capacity, (LH[#] 5) and Jacobsen might have pointed out that if the earthly analogy is to be followed then Šamaš must have had some special place in the assembly.

"In general' the competence of the Old Babylonian assembly is that of a law court."² The plaintiff in a case must himself notify the assembly of his complaint (*puhrum lummudum*),³ or the king might delegate a case to the assembly.⁴ In fact the assembly had such power in legal matters and was held in such respect by the king that he did not feel free to interfere with its decisions.

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1. D.O. Edzard, *Wörterbuch der Mythologie, Band I, hrsg. H.W. Haussig*, 126, 'Utu ist mein Richter'. cf. also D.O. Edzard, 'Die frühdynastischen Zeit', *Die altorientalischen Reiche, I* ((*Fischer Weltgeschichte, II*) 89.
 2. Jacobsen, *loc. cit.*, 164. cf. Walther, *Gerichtswesen*, 45ff.; Koschaker, *HG, VI*, 148.
 3. cf. *PBS V*, 100, 3, 35-38.
 4. BE VI, 2, No. 10. cf. The case of Naboth (I Kings 21).

Thus a certain Qarradu points out, to Iasmah-Addu how both Samsi-Addu and Isme-Dagan had refused the request of a man found guilty, *is-tu-ma* *[Qar-ra-du] u lu su-qa-qu di-in-ka d[i-n]u. a-na-ku mi-nam-mi*

a-qa-ab-bi. 'Since Qarradu and the sheiks have judged your case, what

can I say?' ARM V. 72: rev. 9-11.

Qarradu holds this up

as proper behaviour.² Schorr has pointed out that even small towns in Mesopotamia had their local assemblies, eg. Hudadu, and Sibabu.³

The cases tried by the assembly were both civil and criminal.⁴

LH[#]202 indicates that the assembly had power to administer punishment, for the man who smites his superior is to be beaten with an ox whip *ima puhrim* 'in the assembly'. The assembly possessed the authority to impose the death penalty and this was carried out when dealing with a case of murder (PBS 8, 2 No. 173 = *An. Bib.* 12, 130 ff).

The Assyrian merchant colonies in Asia Minor had an assembly made up of the 'company (*kārum*) of merchants'.

1. Since the advice is given by Qarradu at Iasmah-Addu's request it seems probable from his appearance with the sheiks that Qarradu is a judge.
2. cf. H.W.F. Saggs, *JSS* 5 (1960) 416.
3. Schorr, *Urkunden*, p. 342.
4. Civil cases quoted by Jacobsen are:- BE VI 2 No. 10, a dispute about ownership of a garden; PBS 5, 100, a case about disputed paternity: VAS 7 No. 141, disposal of lost property; CT 8, 19 BU 91-5-9, 650 nullification of a contract entered into under duress. Criminal case :- PBS 8, 2 No. 173 murder.

It functioned as a legal tribunal and gave decisions in law suits,
 eg. *kārum dīnan idīnma* 'the karum rendered the verdict' MVAG 33 No. 274:1.¹
 Jacobsen regarded this assembly as the highest judicial authority²
 but this is doubtful in view of references to *ālum u bēlum*,³ an
 expression discussed below. The assembly was convened by the clerk
 (DUB. SAR) at the bidding of a majority of the elders.⁴

These local assemblies were held in Mesopotamia, in the city gate:-
ṣap-pa-ru-ú ina bāb de-e-ni ú-šú-uz im-na ú šu-me-la kat-ra-a
ú-pa-qa-ad i-di hi-bil-ta-sú^d UTU qu-ra-du *BWL* 218: 8-10.

'8. the winking man⁵ stands in court at the city gate

1. cf. *CAD* 8, 231ff for further references to legal activity of the *kārum*.
2. *loc.cit.*, 161.
3. cf. P. Garelli, *Les Assyriens en Cappadoce*, 324f., and A. Goetze, *Kleinasien*², 72.
4. Driver-Miles, *AL*, 379
5. Lambert, *BWL*, 219 translates *ṣapparrú*¹ 'sycophant' while *CAD* 16, 97 says the meaning is unknown but suggests *ṣabāru* 'to prattle, be voluble; squint, signal with the eyes'. The latter meaning of *ṣabāru* gives good sense for *ṣapparrú*¹ in the present context of giving bribes, and corresponds well to a similar passage in the book of proverbs:-
 אִדָּם בְּצִינָעַי אִישׁ אֲיָן הִלְכָה עִקְשׁוֹת פִּיהוּ: קִרְוֹ בְעֵינָיו מִלֵּל בּוֹדְלוֹ מִדְּבַר אֲצַבְעָתָיו:
 Prov. 6:12-13 'worthless man, an evil man, goes about with false speech, winking with his eyes, making signs with his feet, pointing with his fingers.' cf. Prov. 10:10; 16:30. The context is one of falsehood in court where signs are made to others to prevent the course of justice. For the pointing of the finger cf. *LH*¹¹ 127: 28; 132:80 and note the use of אֲנָשִׁי בְצִינָעַי for the false witnesses in the Naboth trial I Kings 21.

- 9. right and left he hands out bribes
- 10. Samas the warrior knows his crimes.'

In Israel too the local assembly met as a court at the city gate.¹

Boecker sees this tribunal as the most important in the Israelite legal system.² He considers that the local assemblies held on to their judicial authority even after the establishment of the monarchy, "Prior to the settlement the Israelite tribes were nomads with the corresponding nomadic legal tradition. With the monarchy a new situation arose with the king as chief judge. The monarchy as a relatively late institution had not the power to influence all areas of life. This is shown by the construction of the O T laws which are in no sense promulgated by the king as state law. The same applies to legal jurisdiction (Rechtspflege). Here too the monarchy had not brought about any decisive change. Rechtspflege remained basically in the area in which it previously belonged, with the local authority."³

- 1. Or more precisely "the cavity in the gate and the place directly behind the gate", K. Galling, *Biblisches Reallexikon*, 525.
- 2. H.J. Boecker, *Reideformen des Rechtslebens im Alten Testament*, 12.
- 3. Boecker, *op.cit.*, 11 cf. A. Alt, 'Die Ursprünge des Israelitischen Rechts', *Kl. Schr.*, I., 299. anm 1.

(b) The composition of the assembly

In Israel justice was administered by the local עדה.¹ This was made up of all free citizens together with the elders and the judges.² It is difficult to see why Falk suggests that the 'local assembly' and the 'elders' are to be so rigorously distinguished that the judicial function of the former should, in time, pass to the latter.³ They are to be distinguished,⁴ but only in so far as the 'elders' form a special group within the עדה. Wolf suggested that the term זקנים 'elders' covered all male adults.⁵ The legal status and office of a זקן should however be distinguished and the term 'elder' used to denote the senior male member of each house who acted as its spokesman in community affairs.⁶ The office of an elder was thus associated with a man who had left his father's house and become a householder in his own right.⁷ Phillips suggests that after the establishment of the monarchy social classes appear among the elders themselves but he bases this solely on the appearance of the term חרינו (I Kings 21:8ff) which he takes, following Van der Ploeg,⁸ to mean the upper class.⁹ Such an argument falls to the ground when it is realised that זקנים וחרינו is, as Anderson suggests,¹⁰ a hendiadys for 'elders'.

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1. R. Gordis, 'The Biblical' 'edah', *Alexander Marx Jubilee Vol.*, 369-88 Köhler, *Hebrew Man*, 153.
 2. Falk, *Hebrew law in Biblical times*, 51, and McKenzie, *Biblica* 40 (1959) 526.
 3. Falk, *op.cit.*, 52.
 4. A. Malamat, *Organs of statecraft in Israel*, 19.
 5. C.U. Wolf, *JNES* 6 (1947) 99f.
 6. Phillips, *op.cit.*, 17; Evans, *BASOR* 150 (1958) 32f.
 7. McKenzie, *op.cit.*, 522ff.
 8. Van der Ploeg, *RB* (1950) 57f.
 9. *op.cit.*, 18.
 10. F.I. Anderson, *JBL* 85 (1966) 55.

The elders appear with the heads (of tribes), judges, and שׂרִים at Joshua's command (Josh. 8:33). The elders and שָׂרִים are linked by Isaiah in his condemnation of oppression (Isa. 3:14) indicating that they were jointly responsible for administering justice. In view of the fact that the שָׂרִים are responsible for conducting Jeremiah's trial (Jer. 26:10ff) McKenzie suggests that by Jeremiah's time the שָׂרִים, whom he regards as royal officers, had taken over the judicial functions of the elders.¹ Pedersen's caution is, however, valid when he states that this is not a normal case since it takes place inside the temple precincts where the royal officials had authority.² McKenzie's suggestion that the שָׂרִים might have been, like the Hittite garrison commanders, commanders of local military units who sat with the elders in a legal tribunal³ is in keeping with what was said above on the 'judges' as military leaders and the argument developed there. If this is correct then the judges mentioned together with the elders in Deuteronomy are to be regarded as military שָׂרִים. (Deut. 21:3) Prior to the establishment of the monarchy these שָׂרִים will have risen as charismatic leaders but after the division of the kingdom and in particular Jehoshaphat's reform they will have been royal appointees. Phillips understands the military nature of the שָׂרִים judges but because he fails to appreciate that they existed prior to the monarchy, and regards the royally appointed שָׂרִים as replacing the jurisdiction of the elders,⁴ he is forced to conclude that those sections of Deuteronomy which mention the elders administering justice must ante-date

1. *loc.cit.*, 526.

2. J. Pederson, *Israel, II-IV*, 75.

3. McKenzie, *loc.cit.*, 529; O. Gurney, *The Hittites*, 68-69, 72, 92-93.

4. *op.cit.*, 18.

Jehoshaphat's reform (Deut. 19:12; 21:2ff, 19f; 22:15f; 25:7ff).¹

The situation in fact was that the זָרִים sat in assembly with the elders in the local forum.

In Mesopotamia the local assembly was known as the $\bar{a}lum$ 'town' or the $puhrum$ 'assembly', terms which connote the same entity.²

The town ($\bar{a}lum$) and elders ($\check{s}ib\bar{u}tum$) are, however, to be distinguished for one another³ though they did function together as a tribunal.⁴

At times the 'elder of the city' ($\check{s}ib\bar{u}t \bar{a}lim$) and the judges sat together, or at times the elders sat alone to try cases, or the $rabi\bar{a}num$ ⁵ 'mayor' or 'chief magistrate' sat alone or with the elders to form a court.⁶ If McKenzie is right in equating the $hazannu$ with the Israelite זָרִים ⁷ then he too may be a military governor-cum-judge in the same way as the Israelite and Hittite models.

1. *ibid.*, 19.

2. Jacobsen, *loc.cit.*, 162 n.18.

3. Koschaker, *HG*, III 715, *HG*, V 1194 which mentions $\bar{a}lum \bar{u} \check{s}ib\bar{u}tum$.

4. Jacobsen, *loc.cit.*, 162 n.18.

5. At most times other than O B the term for this office is $hazannu$
CAD 6, 163.

6. *BL*, I, 493.

7. *loc.cit.*, 530.

Cuq takes the Babylonia courts of the Hammurapi period to be composed of 'elders of the city', notables (*awīlum*) or the merchants (*tankārum*) or 'the man of the gate' (*māri bābtim*).¹

In the Assyrian trading colonies the *kārum* 'colony (of merchants)' was responsible for administering justice but not, as Jacobsen proposed, the ultimate judicial authority.² This proposal is not likely since the expression *ālum u bēlum* has been taken to mean 'city and prince' and to refer to Assur, the city.³ The expression occurs in reference to legal proceedings, *ana ālim u bēlīya awātī bila* 'bring my matter to the city and my master' (Eisser-Lewy No. 253), and the deposit of tablets 'before the city and our master' (*maḥar ālim u bēlim iššakkunu*) (Eisser-Lewy No. 298). This indicates that Assur had a final say in legal matters among the colonists and was the highest court.

(ii) The divine Assembly

Jacobsen in his basic study⁴ has presented a most useful picture of the Mesopotamian divine assembly as a reflection of Mesopotamian assemblies in general. As was pointed out above, however, his view of the divine assembly as a legal forum is incomplete since it takes no account of Šamas who was already regarded as the judge god.⁵

1. E. Cuq, *Études*, 358.

2. *loc.cit.*, 161.

3. Garelli, *op.cit.*, 324f.; Landsberger, AO 24/4 (1925) 8; CAD 1¹, 383, 388a.

4. *loc.cit.*

5. above pages 36-37.

The idea of a divine assembly has been seized upon by Huffmon¹ and Wright², among other Old Testament scholars, and used to analyse the 'covenant law suits' of the O T. Wright is quite adamant in applying the concept of the heavenly judicial assembly to the preaching of the prophets, he says, "the breach of covenant and the consequent heavenly *rib* is the conceptual setting of Israel's classic prophecy."³

He further takes it for granted that in the light of Jacobsen's study "the judicial function of the divine assembly is known."⁴

It will be sufficient here to say that valuable as Jacobsen's study is it has by no means defined the functioning of the divine assembly when operating as a judicial tribunal. Canaanite references to the divine assembly cast light on its political function but not its judicial, and the O T texts are too few in number to give a clear idea (*cf.* Ps. 82. Zech. 3. I Kings 22, Is. 6 and 40).⁵

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1. 'The covenant lawsuit in the prophets', *JBL* 78 (1959).
 2. Wright, 'The lawsuit of God', *Israel's prophetic heritage*.
 3. *ibid.*, 59.
 4. *ibid.*, 46.
 5. See the section, 'The Divine Lawsuit', Ch. 3.

CHAPTER 2.

Accusation and Warning

Prior to the actual setting in motion of court proceedings an accusation had to be made in the event of a criminal case. This chapter will examine the various types of accuser operating in Mesopotamia and Israel, and also the warning one party might issue to another so that court proceedings could be avoided.

A. Cuneiform Sources.

In Sumerian and Akkadian sources a variety of terms occur designating accusers and, as with the Hebrew material, it is often difficult to decide whether accusation is to be understood or the corroborative evidence of witnesses.¹ There is an additional difficulty of determining when accusation in a legal context is meant and when a more general sense of gossip or slander is indicated.²

Oppenheim dealt with a number of the terms for accusation in a study which set out to show how certain officials whose work caused them to be feared and disliked were, in the course of time, taken as models for demons.³

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1. E. Szlechter, 'La procedure accusatoire en droit sumero-babylonien', *RIDA* 16 (1960) 75. cf. B. Gemser, *VTS* 3 130, and A. Gamper, *Gott als Richter*, 174; Boecker, *Redeformen*, 13.
 2. On slander in the Old Assyrian period see M.J. Larson, 'Slander', *Or.* 40 (1971) 317 ff. The terms dealt with there indicate slander in general, not a specifically legal sense.
 3. A.L. Oppenheim, 'The eyes of the Lord', *JAOS* 88 (1968) 173 ff.

In the OB period the terms *mubbirum* and *munaggirum* occur designating 'accusers'.¹ *mubbirum* is used in LH[#]1 together with the verb *ubburu*:
šumma awīlum awīlam ubbirma nērtam elīšu iddīma lā uktīnsu mubbiršu iddāk.

'If a man accuses a man and has charged him with manslaughter but has not proved it against him, his accuser shall be put to death.'

This is the only place in the laws of Hammurapi where *mubbirum* occurs though the verb *ubburu* is again found at #131: *ubburu* is used there also in a juridical setting:

šumma aššat awīlim mušsa ubbiršima itti zikarim šanīm ina utūlim lā iṣṣabit niš ilim izakkarma ana bītīša itār

'If a man's wife has not been seized lying with another man (yet) her husband has accused her, she shall take an oath by the life of a god and return to her house.'

ubburu occurs once more in the laws of Hammurapi in relation to property lost in a given district:

šumma awīlum mimmušu la ḥaliqma mimmuā ḥaliq iqtabi bābtašu ūtebbir kīma mimmušu la ḥalqu bābtašu ina mahar ilim ubāršuma mimma ša irgumu uštašannāma ana bābtīšu inaddin LH[#]126.

'If nothing belonging to a man is lost but he states "something belonging to me is lost" and accuses his district, his district shall formally declare before a god that nothing belonging to him is lost, and he must pay for everything for which he has brought a claim and give it to his district.'

mubbirum occurs in the 'prophecy' CT 13 50 K. 7861 published by A.K. Grayson.²

1. Oppenheim, *loc.cit.*, 177; Szlechter, *op.cit.*, 77 ff.

2. A.K. Grayson, *JCS* 18 (1964) 16; 12.

It is found in a passage describing a *mēšarum* act which, while the copy itself is late, Finkelstein takes to be OB.¹ He concludes that the *mubbirum* arose to act as informer in times of economic depression.

Munaggirum is restricted to LH. LH[#]26:10 describes the activity of the *munaggirum* in denouncing military personnel who refuse to do the king's service or hire a substitute to do it for them. Landsberger³ has suggested certain points of difference between the *mubbirum* and the *munaggirum*. He claims that the passages from the vocabularies show that the act of *nuggurum* became professional: it always claims to serve the public interest.⁴ He states that *ubburum* was by nature a risky undertaking, whereas the professional *munaggirum* was not normally punished if his denunciation proved to be unjustified.

It is not, however, as Landsberger claims, evident from the vocabularies that the act of *nuggurum* became associated with a professional accuser. Landsberger quotes the OB lú' series recension A line 230, lú'-KA-šú-đù-đù (or lú'-KA-šú-đug₄-đug₄)⁵ = *mu-na-gi₄-rum*, as indicating the professional standing of the *munaggirum* but; 'In contrast to the Lu-ša and its forerunners, OB LÚ has a wider anthropological outlook and contains mostly terms for psychological qualities, bodily characteristics, morbid states, and general human activities, usually of a non-professional character'.⁶

1. *op.cit.*, 177 note.

2. *ibid.*

3. B. Landsberger, 'Remarks on the archive of the soldier Ubarum', *JCS* 9 (1955) 124.

4. *Op.cit.*, 123, 1a.

5. Reconstructed *MSL* 12 p. 164.

6. *MSL* 12 p. 151, My underlining.

mu-na-gi₄-rum occurs again in recension D line 143. This shows that *nuggurum* is merely a common human activity and in no way implies professional status for the *munaggirum*. Oppenheim agrees that neither the *munaggirum* nor the *mubbirum* were anything more than occasional informers, unlike those officials after whom certain demons were named.¹ As stated above, both the terms under consideration are restricted to OB and while Landsberger does not give details of how he reached his conclusion that *ubburum* was a risky activity while the *munaggirum* was not punished, it is hard to justify this claim on existing evidence. Despite Landsberger's protestations of arbitrariness by the king the text he quotes, *YOS 20:2*, indicates that the *munaggirum* also ran certain risks:

*a-a-u^u-um-ma ta-gi-ir-tam ana sar-ri-im u^u-si-ri-im-ma ta-gi-ir-ta-su^u
u^u-ul i-ma-ha-ar-ma sar-rum i-da-ak-su^u*

'Someone will bring an accusation to the king, his accusation will not be accepted and the king will kill him'.

No valid distinction can be drawn between *mubbirum* and *munaggirum*.

On the subject of official accusers Oppenheim states ,
"As a matter of fact, there does not seem to have existed in Mesopotamian an institutionalised 'accuser' before the Neo-Babylonian period"². At this period there occurs in ration lists from the temple administration, references to food rations paid to persons called *murassu*.³

1. *loc.cit.*, 177.

2. *loc.cit.*, 177.

3. *cf.* Nbn 546:27, 915:23 and GCCI 1 210:9, 255:7. The last two are from Uruk.

The official bearing the name appears in the series *lu*¹ which enumerates names of professions crafts, etc., in III i 30f as follows:

EME e-me-tu-ku TUK = *šu-u*² (ie. *emetukū*) *mu-ra-šu-u*³.

He is listed between the *ākil karṣi*¹ 'accuser' and the *dābibu*

'the one who likes to quarrel'. The meaning of *murāssū*⁴ is, according to Oppenheim, based on the verbs *ruššū*⁵ and *ruteššū*⁶ and he refers to the syllabic Sumerian spelling of the designation *murāssū*⁷ as LÜ.E(!) ME.TUK in a contemporary Neo-Babylonian text, Nbn 362:4 as confirmation.² This passage shows that the individual had an

official position and function as 'accuser' and 'informer'.³

*murassu*⁸ as a word for 'accuser' is only known from these late texts but its appearance in the lexical series attests its existence in the 2nd. millenium B.C., though it is not possible to tell whether or not this specific connotation was known.

The term *bātiqānu* occurs in the middle Assyrian laws:

bātiqānšu lubultušu ilaqqi KAV IV 82 (Ass. laws #40)

'he who informed against him takes his garment' while *bātiqū* in the sense of 'accuser'⁴ occurs in Neo-Babylonian times, eg.,

ina ūmu mukīn lu bātiq uktinnūšunūtu hītu šarri išaddadu

'as soon as either informers or witnesses testify against them one day they will be considered as having committed a sin against the King

'An.Or. 8 61:71.

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1. This expression designates an accuser in the general sense, and is restricted to literary texts and situations outside a legal setting such as denunciations, jealousies at court, etc.
 2. *loc. cit.*, 178
 3. This goes beyond the translation suggested by Kraus, ZA 43 (1936) 106, of "Zanker", as a more official status is required in view of the last text cited.
 4. In OA it has the meaning 'traveller'.

The verb *bataqu* has a common meaning of 'split, rend' but it can also have the meaning 'accuse, denounce' as eg. *PN māṛassu ibtuqāma ina bitišu iklāsīma* 'they accused his daughter PN and he held her in his house' Peiser Urkunden 116:9 (M.B.). The D. form *buttuqu* also has the meaning 'accuse, denounce' in: *iḥalliḡ maškānu libattiqši* 'should she run away, the fetters will betray her'¹ CT 43 27:28 , as early as the OB period. There is no reason to suppose that this term denotes anything but casual accusation and accusers.² Certain phrases and expressions occur in OB texts which indicate accusation either of a general nature or accusation of specific crimes.

Szlechter points out that in LH #1 the expressions *nērtam eliṣu iddiṃma* and *ṣumma awīlum awīlam ubbirma* both indicate accusation but the phrase *nērtam eli ... nadū* defines the nature of the accusation.³

Similarly in LH #2 the expression used to indicate the accusation of sorcery is *ṣum-ma a-wi-lum ki-iš-pi e-li a-wi-lim id-di-ma* and the accuser who has to provide proof of his accusation is designated *mubbirum*. Szlechter points out that in the laws of Lipit-Ištar LI #22 the sumerian verb *IA* corresponds to *ubburu* in LH #1.⁴

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1. Contra Kraus, *AbB* 1 page 23, who translated, 'die Kette soll sie daran hindern', but the forced nature of this translation is reflected in his footnote which reads, lit. 'abschneiden'.
 2. So Oppenheim, *loc.cit.*, 177.
 3. Szlechter, *loc.cit.*, 77-8.
 4. *IA* and *ubburu* both mean 'to bend', *ZA* 18 (1957) 327, and also to accuse.

The laws of Ur-Nammu, however, in LU# x+3 VI. 270 ff, cater for accusations of sorcery as does LH #2 and here Sumerian SUB corresponds to Akkadian *nadû*.¹ It is noteworthy, therefore, that in the present case SUB may be taken as a synonym of LĀ, both meaning to accuse.²

With regard to the expression, *ú-ba-nu-um eli-ša it-ta-ri-iš-ma* LH # 132 'if a finger has been pointed at her', it is not possible to tell whether actual physical gestures were still involved in OB times or whether the formula had become merely idiomatic by this time. It is clear, however, from LH #132, and also LH #127, that the expression meant 'to accuse'. That the expression had definite legal implications is clear from LH #127:

šum-ma a-wi-lum e-li NIN.DINGIR ù aš-ša-at a-wi-lim ú-ba-nam ú-ša-at-ri-iš-ma la uk-ti-in a-wi-lam šu-a-ti ma-ḫar da-a-a-ni i-na-at-tù-ú-sù ù mu-ut-ta-sú ú-gal-la-bu

'If a man has caused a finger to be pointed at a high priestess or a man's wife and then has not proved his case, they shall flog that man before the judges and shave off half his head'

To point the finger is no mere empty expression for it carries with it the burden of proof in court.

On the basis of a text from Mari³ Szlechter⁴ argues that *mubbirum* is parallel to the expression *māḫiṣ qaqqadim* 'smiter of the head', and CAD agrees with this comparison.⁵

1. Szlechter, *loc.cit.*, 81.

2. Falkenstein, *Neusumerischen Gerichtsurkunden*, II, p. 333.

3. G. Dossin, in *Symb. Kosch.*, 112ff, 'Un cas d'ordalie par le dieu fleuve d'après une lettre de Mari'.

4. *loc.cit.*, 101f.

5. CAD 20 (S) page 156, sub. *ṣibittu*.

The text in question is a letter from Iatar-Ami king of Carchemis to Zimrilim king of Mari arranging for the trial by the river ordeal of two men accused of participating in a conspiracy against the town of Irrid. The letter runs (15)

^{lu} ma-hi-iš qa-qa-di-šū-nu an-ni-ke-em ina ši-bi-tim i-na-ša-ru

'here they keep their accusers guarded in prison'

If the men return safely from the ordeal the fate of the māhiš qaqqadim is determined, ^{lu} ma-hi-iš qa-qa-di-šū-nu i-ša-tam a-qa-al-lu

'I will burn their accuser with fire'. If, however, the men do not return from the ordeal then the accuser (māhiš qaqqadim) takes their houses, relations, etc.

The expression qaqqadam mahāšu occurs once elsewhere in a legal setting in a text from Alalah:¹

(12) un-ma Ta-at-te-e-ia-ma (13) Ia-ri-im-li-im

(14) qa-qa-di-ia li-im-ha-aš-ma (20) qa-qa-ad Ta-at-te-e-ia

(21) im-ha-aš-ma (22) ^{uru} Na-as-tar-pi^{ki} (23) ana Ia-ri-im-li-im

(2) it-tu-ur-ma. (AT No. 11)

Quite what significance is to be attached to qaqqadam mahāšu in this text is as yet unclear.² Wiseman suggests it is 'probably a symbolic gesture with legal implications'.³

1. D.J. Wiseman, *AT*, 38.

2. So Von Soden, *AHW*, 'unklar'.

3. *Op.cit.*, 38.

The object of the law suit at Alalah was a paternal bequest and a similar bequest is at issue in a letter from Mari in which an expression also involving a phrase containing the word head (*qaqqadam*) is used: (22) *ša-ni-tam aš-šum bītī-ia e-li-ia-a* (23) *I-din-an-nu qa-qa-dam ir-ši-ma* (24) *ù i-na bītī-ia ú-še-šú-ni-ne-ma* (25) *ša-a-tu ú-še-ri-bu-šu*

'Secondly concerning my house Iddinannu has accused (?)¹ me and they have evicted me from my house and granted him possession.'

ARM 10 90:22ff. At present the translation 'accuse' is suggested for the expressions *qaqqadam mahāšu/eli...rašūm* and this accords with the meaning 'accuser' for the Dossin text. The meaning 'accuser' for the *māhiš qaqqadim* in the Mari text is supported by comparing the procedure proposed there with LH #2 where the accused is forced to take the river ordeal while the accuser awaits the outcome. As in the Mari letter, if the accused fails to return the accuser (*mubbirum*) takes his house but if the accused returns safely then the accuser loses his own house.²

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1. W.H. Ph. Römer, *AOAT* 12, 82-3 suggests the expression *qaqqadam eli...rašūm* means 'to gain pre-eminence' but confesses that, while *šūšūm* and *šūrubum* are clearly legal terms the entire section of the letter remains uncertain while no definite translation can be appointed for the expression *qaqqadam eli...rašūm*.
 2. Szlechter suggests that the accuser in this case, *i.e.* a charge of sorcery, did not suffer the death penalty; but the suggestion that he lost his *bītum* *i.e.* his entire household, may suggest that as in LH #1 the accuser in a charge of *nērtum* 'man slaughter' was put to death.

B. O T Sources

As with the cuneiform terms those dealt with in this section lack definition. Thus Gemser points out that the term ^{7_u} "can mean plaintiff, accuser, as well as witness and even judge".¹ While the final part of this statement will be challenged in Chapter 3, it serves to illustrate the degree of confusion which can exist due to lack of precision of legal terminology in the Old Testament. Ehrlich sought to show that 'wenn von einem Zeugen vor Gericht die Rede ist, denkt der Hebräer immer nur an die Anklage oder die Klage'.² This statement is modified by Seeligman who concludes that while it is true of all other passages it cannot be applied to Isa. 43:9.³ In this particular passage the nations assemble and their gods are asked to provide witnesses to justify (^{עֵדוּת}) any claims that they have been able to foretell events. Excepting this one passage Seeligman accepts Ehrlich's statement. It must be pointed out, however, that in the same section of Isaiah Israel is called upon to be ready to appear as Yahweh's witnesses to justify his claim to having foretold events accurately , Isa. 43:10-13.⁴

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1. B. Gemser, 'The Rib-pattern in Hebrew mentality', *VTS* 3 130 .
Followed by Gemser, *Gott als Richter*, 174; Boecker, *Redeformen*.
 2. Ehrlich, *Randglossen*, I, (1908) 345, on Ex. 20:16.
 3. I.L. Seeligman, 'Zur Terminologie für das Gerichtsverfahren', *VTS* 16, 262.
 4. C.R. North, *The Second Isaiah*, (1964), 122.

It is true that the majority of occurrences of the term עֵד in a court setting imply indictment, though it should be noted that this need not mean that the עֵד being referred to in a particular passage was responsible for the primary accusation. Having said this, Lev. 5:1 is a passage in which the עֵד is clearly envisaged as responsible for bringing the primary accusation:

Lev:5:1 : וְשָׁמְעָה קוֹל אֱלֹהִים וְהָיָא עֵד אֲוֹ רָאָה אֲוֹ יָדָע אִם צִי יִגִּיד וְנָשָׂא עוֹוֹן :

'When he hears the voice of adjuration and he is a witness, whether he has seen or known anything, and does not testify, he shall bear his guilt.'

So also in Num. 5:13 the witness is the accuser. Here the expressions וְעַד אֵין בָּהּ 'there is no witness against her' and וְנִסְתַּרָה 'she is undetected' are parallel sentiments indicating that the term עֵד designated the accuser, if one exists.

Yahweh appears as an accuser (עֵד) in Mich. 1:2 and still more clearly in Mal. 3:5 which reads:

וְקָרַבְתִּי אֲלֵיכֶם לְנֹשֵׁט וְהֵייתִי עֵד עֲמָהֶר בְּנֹשְׁפֵיכֶם וְגו'

'I will draw near to you for judgement and I will be a swift accuser against the sorcerers, etc.'

The various terms used to describe עֵדִים will be discussed in Chapter 3. Some of the cases to be discussed there may well deal with accusation or with secondary witness or corroborative witness as eg. Deut. 19:15 where the term is עֵד חֹמֶס taken by Seeligman¹ to indicate a witness whose false testimony brings about the death sentence, but again it is not clear whether or not this witness is initially the accuser.

1. *loc.cit.*, 263. cf. 258 where עֵדִים is compared with עֵדֵיךָ

He 'testifies to wrongdoing in (the defendant)'

3 ענות בו פרה
-1-
Deut. 19:16

and as will be shown below ענה can simply mean 'testify',¹
or in some cases accuse, I Sam. 12:3.

The verb with which ענ is associated is העיד. It has developed a wide range of meaning and is by no means restricted to legal usage (cf. Job 29:11, Lam. 2:13). Apart from its use in Isa. 8:2, Jer. 32:10, 25, 44 where it is used of taking witnesses to attest an action outside court the only example of its purely legal use is in I Kings 21:10, 13 where it is used of the false witnesses who testify against Naboth. Here, despite the commonly held view to the contrary,² it does not denote accusation but corroboration. The whole Naboth incident was a genuine legal process but had certain peculiarities which distinguish it from the normal trial. It is in fact the fullest record in the Old Testament of an actual legal process involving accusation and witnesses and will therefore need to be fully investigated.

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1. For the use of ענה_ט in testimony of a beneficial nature. cf. the 'Yabneh Yam Letter', *IEJ* 10 (1960) 130 (cf. *BASOR* 165 (1962) 42-46). Line 11 reads "my colleagues will testify (ענה) on my behalf".
 2. Montgomery, *ICC Kings*, in. loc. J. Gray, *I & II Kings*, (1970), (2nd ed.), in. loc..

(i) The Naboth Incident

Even though the witnesses are described as אֲבוֹתָיו - הַקְּבָרִים³ and the account makes it plain that they were suborned, yet there is no reason to believe that the legal process did not follow a recognised pattern. Indeed this was necessary for Jezebel's purposes.

In the first place Naboth is to have a capital charge laid against him to enable Ahab to gain possession of his vineyard. By the nature of Israel's laws of succession, however, the property would, on Naboth's death, normally have passed to his sons,¹ or in the event of his having no sons to his nearest male relative.² From a reference in II Kings 9:26 it is clear that Naboth's sons were slain with their father in connection with the same charge.

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1. Deut. 21:17, R. de Vaux, *Ancient Israel*, 536; J. Pedersen, *Israel*, i-ii, 89ff.
 2. Lev. 5:23 lays down the principle of Yahweh's ownership so that the land "shall not be sold for ever".

In Southern Mesopotamia property was freely transferred but the Mari documents indicate that transfer of inherited land (*nihlatum*) was subject to strict control. Fictitious adoptions were often entered into to evade this stipulation cf. A. Malamat, 'Mari and the Bible: some patterns of tribal organisations and institutions', *JAOS* 82 (1962) 143-50. cf. also Prov. 17:2 :

עֵבֶד מַסְכֵּךְ יִמְשֹׁכַת בְּבֶן אָבִישׁ וּבֵיתוֹךְ אַחִים יִחַלְקֶנּוּ נַחֲלָה :

The fact that such an elaborate procedure was set in motion by Jezebel suggests that Ahab's seizure of the land after Naboth's death was still within the law,¹ at least to all outward appearances. This implies that not only were Naboth's sons slain with him but that his relatives were prevented from claiming the property at his death. The number of crimes which demand this severe penalty is strictly limited, indeed the only explicit case is that envisaged in Exod. 22:19:

זָרַח לְאֱלֹהִים יַחַד בְּלִבֵּי לְהוֹיָה לְכַדּוֹ :

'whoever sacrifices to any god save Yahweh shall be put to the ban'.²

But Naboth was accused of 'cursing God and the king', a crime which occurs in Exod. 22:27 and an actual case of which is dealt with in Lev. 24:10ff. In the latter case it is clear that the death penalty was exacted for infringement of Exod. 22:27 but the guilty party alone was executed not his family. Deut. 24:16 in fact forbids the execution of children for their fathers crimes. This law is cited in II Kings 14:16 and there Amaziah appears to be praised for his unusual clemency; that there was felt to be a danger of the practice is shown by the existence of a law forbidding it.³

1. A. Phillips, *Ancient Israel's criminal law*, 44ff. F.I. Andersen,

'The socio-juridical background of the Naboth incident', *JBL* 85 (1966) 55, (with help from A.D. Kilmer for Alalah material).

2. There seems no compelling reason to amend the text to conform to the Samaritan and LXX^A which have the more common expression: מוֹת יָמֵת .
The Samaritan omits 19b.

3. S.R. Driver, *Deuteronomy*, ICC, 227.

In the case of Amaziah where he does not slay his father's assassins there may be a question of the king's interpretation of the law. As pointed out in Chapter I,¹ the king's legislative activity involved the interpretation of existing law. If the act of assassination of the king came within the category of crimes such as those involving Naboth or that in Exod. 22:19, then the families would die with the perpetrators. If, however, it was not so interpreted, then only the actual murderers would die. Moses exercised his responsibility in interpretation in the case of the woodgatherer, Num. 15:23 ff., and the blasphemer, Lev. 24:10 ff. In both cases the offenders were brought to Moses because they had broken an existing law but in the case of the blasphemer his father was an Egyptian, so it was necessary to affirm that Exod. 22:19 applied to him, cf. v.16, 'the sojourner as well as the native', while in the case of the gathering of wood it would need to be shown to constitute work. David and Solomon both gave judgments which created precedents.

It is, therefore, necessary to examine the exact nature of the offence with which Naboth is charged. The charge runs: ברכת אלהים וּמֶלֶךְ

אַתָּה בָּרַכְתָּ

'you cursed God and king'.

The word בָּרַכְתָּ is generally accepted as a 'standard scribal euphemism'.²

1. Above pages 10-11.
2. M.H. Pope, *Job*, Anchor Bible, 8.

It is a possibility that it has acquired the autonomous meaning it is meant to replace.¹ Cursing is expressed in Exod. 22:27 by the verb קָלַן . קָלַן is used with God as object only in Lev. 24:10 ff; probably Isa. 8:21, cf. LXX reading קָלַן for קָלַן in I Sam. 3:11 ff. Also קָלַן is used as a scribal euphemism for קָלַן in I Kings 21:10, 13 and Job 1:5, 11; 1:5, 9.² Brichto set out to show that in Pi'el it has the idea of 'repudiate, spurn'. Applied to God קָלַן is to "repudiate God".³ It signified a breach of covenant stipulations of Sinai and a total rejection of Yahweh.⁴ Brichto also subjected the verb קָלַן to an analysis and concludes that it has the sense of 'anathematize', 'ban', 'place under a spell'.⁵ Thus the passage in Exod. 22:27 is rendered 'You shall not repudiate God (i.e. commit a crime) or bring under a ban a ruler of your people'.⁶

On this basis the crime of which Naboth is accused is not necessarily defined in the expression used, but it is merely indicated that a breach of covenant stipulations (according to Phillips to be equated with the criminal law) has occurred.⁷

1. Andersen, *loc.cit.*, 8.n.30
2. Phillips, *op.cit.*, 41.
3. H.C. Brichto, *The problem of the curse in the Hebrew Bible*, JBL monograph series, 13, 118 ff.
4. Phillips, *op.cit.*, 42.
5. Brichto, *op.cit.*, 77 ff. Speiser, *JAOS* 80 (1960) 198-200.
6. Phillips, *op.cit.*, 43; Brichto, *op.cit.*, 150 ff.
7. Brichto, *op.cit.*, 159 ff; Phillips, *op.cit.*, 43.

Phillips goes on to attempt to prove that the crime in question must have been a breach of Exod. 22:19, *ie.* a breach of the first commandment by entering into relations with other gods, since this is the only criminal offence which demands the בְּרִיחַ 'ban' in which not only the criminal but his family are involved in the death penalty. The בְּרִיחַ according to Phillips is of varying degree:¹

- (i) Total destruction of all persons and property (Deut. 20:6 ff. I Sam. 15:3) .
 - (ii) Total destruction of all persons but not property (Deut. 2:34 f; 3:6 f.) ,
 - (iii) Destruction of males only (Deut. 20:10 ff. though the term בְּרִיחַ is not used here).
- The only other crime, he says, for which the ban was inflicted was regicide. II Kings 14:6 he therefore takes to indicate that under the Davidic kings the king's position was particularly sacrosanct since the Davidic covenant with Yahweh ensured the dynastic succession and so to assassinate the Davidic king was a direct repudiation of Yahweh himself. The first commandment was thus extended to include murders of the Davidic king. II Kings 14:6 quoting Deut. 24:16 confirms that the ban for this crime was restricted to lineal male descendants. This conclusion must, however, remain doubtful for the text does not indicate that the ban, even in a limited form, ever operated in the case of regicide.

1. *op.cit.*, 40.

It appears rather that Amaziah was exercising this royal prerogative of interpretation¹ to exclude this particular crime from the category of those demanding the ban. In any case the charge against Naboth was patently not regicide.

D.J. Wiseman has published a text from Alalah² which relates a claim brought by a certain Satuwā before king Niqmeša. Satuwa claims that he had paid the betrothal payment for the hand of a certain Apra's daughter for his son. Before the marriage could take place Apra turned into a *bēl mašikti* and was slain and his property was confiscated by the king. Satuwa now claims back the betrothal payment from the king and is granted it. Following Landsberger's revised translation³ it appears that Apra was executed for some crime. The text reads:

(7) Ap-ra a-na bēl (8) ma-šī-ik-ti it-tu-ur Rev (9) ù ki-ma ar-ni-šū
iddik.(GAZ) (10) u bīti-šū a-na ekalli (11) i-ru-ub.

Apra became a *bēl mašikti* and he was put to death for his crime⁴ and his property was confiscated by the palace (lit. entered the place). What precisely his crime was is not clear from the expression *bēl mašikti* though *mašiktu* also occurs in the text on the statue of Idrimi.⁵

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1. cf. pp. 10-11 on the king's right of interpretation.
 2. D.J. Wiseman, *Alalah Tablets*, 40, Text No. 17.
 3. *JCS*, 8 (1954) 56, 120 ff.
 4. *CAD*, 3, 43a.
 5. S. Smith, *The Statue of Idri-mi*, London (1949) 1.4.

There *masiktu*^v seems to indicate an upheaval which caused Idrimi to leave his country. Loewenstamm² points out that there is a similarity between this text and the case of Naboth where both are put to death for some offence and their property is taken by the king. That Niqmepa's seizure of the property was in accord with the law is shown by the fact that he grants Sa^vluwa a return of the betrothal gift.² This, of course, does not overlook the fact that Canaanite kings could step outside the normal legal process to dispose of political agitators.³

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1. S.E. Loewenstamm, 'Notes on the Alalah Tablets', *IEJ* 6 (1956) 217 ff. See now D.J. Wiseman, 'Archaeology', *New Bible Dictionary*, London, (1962) 66a.
 2. Loewenstamm, *loc. cit.*, 225.
 3. *cf.* *inūma nakir PN tupsarrum itti sarri bēlisu u PN2 iduksu*
'when PN, the scribe, revolted against the king, his lord, PN2 had him executed.' *PRU* III 68 (*cf.* *CAD* 3, 36-37). Note also the case cited by Jacobsen, *JNES* 2 (1943) 165 where a man is arrested by a royal official for seditious utterances and placed before the assembly for trial.

There is no reason, however, to suggest that the ban¹ was ever carried out in Israel for political offences of this nature.²

Andersen construed Naboth's accusation as being that he invoked the name of Yahweh in refusing Ahab's offer but that this was alleged by Jezebel to be an oath of acceptance and so in withdrawing from the alleged agreement Naboth was at fault.

1. Whether in the case of Satuwā he was claiming back the betrothal gift because the girl in question had been put to death with her father and the rest of the family is not clear from the text.
2. A Malamat, 'The ban in Mari and the Bible', *Biblical Essays*, Stellenbosch, (1966) 40 ff., compares the Hebrew בַּחֲמַט with Akkadian *asakku* and deduces that they are both terms implying a ban applied under similar conditions, allowing for the Israelite theological presuppositions. He is mistaken in insisting (p.44) that there is 'no reference in the whole of Akkadian literature to the *asakku* (and for that matter to the *ikkibu*) of a king (*asak šarrim*) or other mortal..... Thus Mari was unique'. There exists an OB text from Sippar TLB 1, 231:23 in which an *asakku* of both a god and king is mentioned (cf. CAD 1,² 327a).

Andersen cites AT 61 as an example of the severe penalty exacted for such a crime, *ie.* lead poured into the persons mouth.¹

This is, however, a common prohibition of the curse type used during the Old Babylonian period and there is no example of such a punishment being put into effect. It is in keeping with the exaggerated penalty clauses in many contemporary contracts which would have been impossible to fulfil. Further, as Phillips has pointed out, the death penalty was not demanded in Israel for such offences.

Israel's criminal law nowhere considers property more important than life.² An examination of the trial and certain peculiarities associated with it will make it clearer what the charge must have been and what function the witnesses played in bringing about the infliction of the חַרֵּט.

In the first place the direction from Jezebel using the king's authority³ to proclaim a fast is most unusual in the context. As Andersen points out the connection of jurisprudence with fasting has no parallels elsewhere.⁴

1. Andersen, *loc.cit.*, 53.

2. Phillips, *op.cit.*, 44.

3. The king's dynastic seal was used in official legal documents at Ugarit. E.A. Speiser, *JAOS* 75 (1955) 157. The same applies to Alalah and elsewhere, *cf.* Andersen, *loc.cit.*

4. *loc.cit.*, 56.

Fasting is, however, associated with disaster and an attempt to enquire from God as to the cause.¹ It has been suggested by various authors² that this was the reason for the assembly in question and that the disaster concerned was the drought mentioned in I Kings 17. In this connection a remark by S.R. Driver on the word עֵכָר ties together a number of passages of similar content. Commenting on I Sam. 14:29 he says of the word עֵכָר "An ominous word in the O T, used of trouble brought by Achan upon Israel (Josh. 7, 25 מֵהָעֵכָרִים הַזֵּה), and by the daughter of Jephthah upon her father (Jud. 11:35. וְאֵת הַיִּתְּ בְעֵכָר) and retorted by Elijah upon Ahab (I Kings 18:17 f.)"³ The case on which he is commenting is that in which Jonathan has violated the ban placed by Saul on eating until the sunset. The striking thing in all these cases is that the ban (קָרָה) was felt to be appropriate punishment for crimes committed which led to עֵכָר.⁴

1. H.H. Guthrie, Jr., *IDB*, II, 242b.

2. Montgomery and Gehman, *Kings*, ICC; J. Gray, *I & II Kings* 2nd ed. (1970), in loc..cf. Brichto, *op.cit.*, 161 ff.

3. S.R. Driver, *Notes on the Hebrew text of the books of Samuel*, Oxford, (1913) 114.

4. In the case of Jephthah's daughter she had, of course, committed no crime herself yet the narrative stresses that she was her father's only child and that she was a virgin. In cutting her off Jephthah was applying the ban against himself; hence the reference to עֵכָר.

This is borne out by the case of Achan (Josh. 7:6 ff); Joshua and the elders fasted just as Jezreel fasted on the occasion of a calamity. There Yahweh revealed the cause of the trouble in broad terms:

חטא ישראל וגם עברו את בריתי " וגם לקחו מן הקדש :

'Israel has sinned and violated my covenant ... and taken from the devoted thing' (Josh. 7:11)

It is specifically stated that this act constituted a breach of the covenant stipulations and hence merited death and the ban for the which he had brought on Israel.¹

In the case of Ahab (I Kings 18:17 f.) he accuses Elijah of 'troubling Israel', " האתה עכר ישר' , but the prophet turns the accusation, saying צה עכרתי ישראל כי אם אתה ויבית אביך :

"It is not I who 'trouble' Israel but you and your father's house". This is a clear reference to Elijah's pronouncement that there would be a drought in the land.²

1. G.R. Driver, *JTS* 23 (1972) 161, suggests that Achan only was put to death (seemingly a change of opinion from *VTS* 15 (1967) 57) and not his family. This argument, largely based on variants in the LXX is not fully convincing.

2. I Kings 17:1.

But Elijah equally clearly attributes the עֵכָר to Ahab's illicit relations with other gods.¹ This calls forth the ban on Ahab and his house² in which all his lineal male descendants are to be cut off.³

The ban was carried out, this time by divine intervention, in the case of Korah and his followers.⁴ The charge is contained in

v.30 (end)

בָּאֵצוּ הָאֲנָשִׁים הָאֵלֶּה אֶת יְהוָה

'these men despised Yahweh'.

1. I Kings 18:18. The בְּעֵצֵי־סִדוֹן in question were, no doubt, those associated with Sidon and brought into Israel as a result of Ahabs marriage to Jezebel who was a devoted follower of Baal. Hence both Ahab and Jezebel are linked early in the narrative with the עֵכָר.
2. I. Kings 21:20 ff. cf. G.R. Driver, *VTS* 15 (1967) 57. He points out, as does Malamat, *op.cit.*, 46, that הָרֵם was known in Moab, though he appears to differ from Malamat in denying that the ban was known in Assyria and Babylonia, 59.
3. Drought is commonly included in Near Eastern treaties as a curse to follow violation of the treaty. cf. D.R. Hillers, *Treaty curses and the Old Testament prophets*, Rome ,(1964) 62-3, cf. also Deut. 28:23-4, Lev. 26-14 ff. note also D.J. McCarthy, *CBQ* 27 (1965) 227.
4. Num. 16.

That those men whom the ground swallowed up were understood to have been involved in the ban and so have their names cut off from Israel is shown by the appeal of the daughters of Zelophehad.¹

These women stress that their father was not involved in the rebellion of Korah and therefore, since he died only for his own sin, his name should not be cut off simply because he had no sons. His property was not confiscated because he rebelled² and "despised Yahweh" with Korah, therefore his daughters should inherit his portion and perpetuate his name. In the case of Jonathan³ the curse laid by Saul became the cause of נֶכֶד
ר and steps were taken to find the man responsible for the offence of eating contrary to the curse.

Normally, as already indicated, accusation came from a witness of the events, but in the account of I Kings 21 it is the 'elders and nobles' הַזְּקֵנִים וְהַחֲרִיטִים.⁴ This is taken by Andersen⁵ to be a hendiadys for those elders who served in a judicial capacity. This expression refers to the particular group to whom Saul appealed and who are referred to as סִפּוֹת הָעָם (I Sam. 14:38).

1. Num. 27:3 ff.

2. J. Weingreen, 'The case of the daughters of Zelophchad', *VT* 16 (1966) 521 f.

3. I Sam. 14:29.

4. see above page 41 ff.

5. Andersen, *loc.cit.*, 55.

Here too the question at issue is the determining of guilt among the people:

וַיֹּאמֶר שָׂאִיל קָשׁוּ-הַלֵּל כִּי כָּפְרוּת הָעַם וַדְּעוּ.
וַיֵּלְכוּ בָּבֹהַב הַיְתֵהּ הַחֹשֶׁטֶת הַדְּאֵרַת הַיּוֹם:

'And Saul said draw near all you nobles¹ of the people; and know and see wherein this sin has come about today'.

The 'nobles and elders' are responsible for determining the guilty party who had committed a crime so as to bring עֹכֵר on the people and this they did in the case of Jonathan by use of the lot.² A similar process of selection of the criminal is indicated in the case of Achan where the same verb נִלְכַּד is used.

The expression בְּרֹאשׁ הָעֵד in the Naboth incident has caused considerable difficulty. Montgomery - Gehman³ take it to mean that Naboth was given a place of prominence which Ellison thinks to be that of chairman of the investigating tribunal.⁴

1. פְּנִינֹת is lit. 'corners' hence its metaphoric usage for 'princes, nobles' i.e. the stay of the people cf. Driver, *Samuel*.

2. The sense of the passage is well illustrated by the LXX text which reads, restoring the Hebrew, לָמָּה זָכָא עֲנִית אֶת עֲבֹדָה הַיּוֹם אֵם יֵשׁ בִּי אִוּ בִּיהוֹנָתָן בְּנֵי הָעוֹן חָזָה > אֱלֹהֵי יִשְׂרָאֵל הִבִּיחוּ אֲנִי וְאַתָּה יֵשׁ בְּעַמְּךָ יֵשׁ" תְּבַהֲתֵמִיד: . Driver, *Samuel*, in loc.

3. *op.cit.*, 331; C.F. Burney, *Notes on the Hebrew text of the books of Kings*, Oxford (1903), 245.

4. H.L. Ellison, I & II Kings, *The new Bible commentary*, London, (1954), 317.

Andersen¹ objects to what he sees as a free rendition in 'on high among the people' and offers two alternative suggestions:

(i) That šr is the title of an official such as the *hazannu* of Ugarit or the *rabi'ānum* in early Mesopotamia an office which rotated among the *šībūt ālim* 'elders of the city'.²

(ii) that šr is a preposition in this context meaning 'in front of but facing away from' in contrast to šr which means 'in front of but facing towards'.³ This latter suggestion seems most reasonable. If the elders operated some sort of selection procedure to determine the guilty party then at the end of this Naboth was left by himself šr and accused. At this stage in the cases of Jonathan and Achan they confessed to their offence. But since Naboth was facing false charges this is not to be expected. In this case the testimony of two witnesses⁴ becomes necessary and these come forward to supply the answer to the problem - Naboth had "cursed God and King" and so broken the covenant stipulations.

1. *loc.cit.*, 56-7.
2. *cf.* Landsberger, *JCS* 9 (1955) 127. G. Evans, *JCS* 14 (1960) 38 note 25.
3. For similar use of Akkadian *ina rēs* *cf.* A.L. Oppenheim, 'Idiomatic Akkadian', *JAOS* 61 (1941) 251-71.
4. *cf.* Deut. 17:6; 19:15. Phillips sees the mention of two witnesses as an attempt by the Deuteronomist to conform to Deuteronomic legislation; P.J. Verdam, 'On ne fera point mourir les enfants pour les peres en droit biblique', *RIDA* 3 (1949) 406 ff. On the question of the number of witnesses see chap. III below.

The fact that the witnesses were sitting seems to bother Andersen¹ for he follows de Vaux² in assuming that both the witnesses and the accused would stand. The texts De Vaux cites to support this (*ie.* Isa. 50:8 end, Deut. 19:17) are not decisive, for the judge is seated till the end of the trial (Isa. 16:5, Job 29:7 *cf.* #LH #5) and rises to give judgment (Isa. 13:13, PS. 76:10). It may be that the parties too were seated for part of the proceedings.³

The witnesses then corroborate the decision of the elders arrived at by manipulation of the lots and Naboth is taken out and stoned. His sons⁴ die with him, though at what time or place this happens is not clear, and the king takes possession of his estate. This is close to the case of Alalah No. 7.⁵

The incident is made all the more ironic when it becomes clear that Naboth is put to death for Ahab's crimes. Ahab it is who has brought the עֵכֶר but Naboth it is who is put to the ban for it.

1. *loc.cit.*, 56.

2. *op.cit.*, 156.

3. *cf.* Jacobsen, *JNES* 2 (1943) 164 *uzuzzu* (to stand) and *wasābu* (sit) are both used as technical terms for participation in the *puhrum*. On the posture of the parties see below.

4. C.F. Burney, *op.cit.*, 212 points out that the phrase : פִּי אֵין
 נְבוֹת וְהַיְכָל כִּי אֵין I Kings 21:15 means Naboth and his sons, just as much as : אֵין אֶתְּהָ v. 19 means Ahab and his sons (*cf.* v.29b),

5. The relationship if any between עֵכֶר and *masiktu* may repay investigation.

הַעִיר has another meaning, namely 'to warn, solemnly affirm'.

It is used of men warning others about the consequences of their actions, eg. I Kings 2:42, where Solomon warned Simei not to leave the city and in Gen. 43:3 where Joseph warned his brothers not to return to Egypt without Benjamin (cf. Neh. 13:21, Jer. 42:19, I Sam. 8:9). It is used in particular to indicate warning by God, directly or by the prophets, of the consequences of continued breach of covenant. Thus Jer. 11:7 reads :

כִּי הָעַד הָעַד־תִּי בְּאַבוֹתֶיךָ בַּיּוֹם הַיּוֹם הַזֶּה הִשְׁמַעְתִּי וְהָעַד לְעַמְּךָ שָׁמְעוּ בְּקוֹלִי :

'For I warned your fathers on the day I brought them up from Egypt even till today, diligently warning them, saying that they should listen to my voice.' The consequences of not obeying Yahweh's

voice are indicated in the next verse:

וְלֹא שָׁמְעוּ וְלֹא הִשְׁמוּ אֶת אָזְנוֹתָם וְגו' וְאֵבְיָא עֲלֵיהֶם אֶת כָּל דְּבַרֵי הַבְּרִית - הַזֹּאת :

'But they did not listen and did not incline their ears

and I will bring upon them all the words of this covenant.'

II Kings 17:13 again deals with warnings by the prophets against deflection from the covenant requirements and Yahweh is the subject of warning speeches in Ps. 50:7 and Ps. 81:9. In these last two cases the warnings are explicitly associated with the Sinai covenant and as Biggs, who notes the relationship with the Sinai covenant, points out, some of the 'ten words' are mentioned as having been violated.¹ The verb is used, as noted above (p55-6), of taking witnesses to attest an action out of court and this usage is illustrated by Isa. 8:2, Jer. 32:10, 25, 44 for civil procedure.

1. C.A. Biggs, *Psalms*, ICC, Vol. 1, 417, Vol. 2, 209 ff.

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There is, however, the case of heaven and earth being called as witnesses to hear Yahweh's warning to Israel through Moses (cf. pp. 148ff.). Here too the element of warning is present and despite the fact that the dictionaries list these latter passages under the meaning, 'take as witnesses',¹ and those in Jer. 11:7, II Kings 17:13, Ps. 50:7, Ps. 81:9, etc. as meaning 'warn',² the verb has essentially the same meaning in all these passages, i.e. 'take witnesses', 'cause to witness'. The witnesses, once present, may be called upon to witness a business transaction or a speech of warning, whether associated with a covenant or not. Thus in time the mention of witnesses in the accusative was omitted from the construction. From the texts cited above the verb can be seen to have had a wide application to situations outside the court and indeed the only clear example of its use in court procedure is I Kings 21:10, 13. The importance of this prelitigation warning will become evident when dealing with the 'covenant law suit'.

The one instance in which the Hophal is used bears out what has been stated above. A man whose ox is in the habit of goring is warned (וַיִּשְׁמַע), so that if after the warning the ox kills a man the owner is to be put to death (Exod. 21:29). There must have been witnesses to the warning if the death sentence was later to be carried out.

1. *eg.* BDB, 730.

2. *ibid.*

(ii) Other terms

With reference to *קָעִיט* as it appears in Ps. 50, a number of other legal terms are associated with it in the same passage, in particular

הוֹכִיחַ and *עִרְךָ*. The latter when used in a legal context means to 'set ones case in order'.¹ *הוֹכִיחַ*

has a wide range of meanings which are listed by Gamper,² Gemser,³ and Seeligman.⁴ The Niphāl occurs in Gen. 20:16 of Sarah being vindicated before all those with her while in Isa. 1:18 and Job 23:7 it is used in the sense of 'reasoning with someone'. These last two cases are taken by Gamper⁵ to mean 'to go to law', 'litigate', while Gemser⁶ is more vague suggesting 'to reason'. Gray, in dealing with the passage in Isa. 1:18 is right when he says: "The occurrence of *תוֹכַחַת* and *עֲצָה* (Prov. 1:25, 30) suggests that *תוֹכַחַת* was nearly = *תוֹבֵצָה* (eg. Neh. 6:7), and meant little more than 'advise together, reason together' (EV). Or derived from the Hiph. in the sense 'to reprove, find fault with' (eg. Ezek. 3:26, Job 6:25) the Niph. may mean 'to reprove one another, to point out one another's faults, to discuss with one another who is right and who is wrong'.⁷

1. Seeligman, *loc.cit.*, 267.

2. *op.cit.*, 192 ff.

3. *loc.cit.*, 124-5.

4. *loc.cit.*, 266 ff.

5. *op.cit.*, 192.

6. *loc.cit.*, 125.

7. Gray, *Isaiah*, ICC, 27-8.

The Hiph. has a wide range of meaning and Boecker¹ argues that the verb had a technical juridical sense and only later developed a more general usage. This is difficult to substantiate and Seeligman has pointed out that when used as a technical juridical term the verb הִוִּיחַ has various shades of meaning.² הִוִּיחַ occurs within a court setting in Isa. 11:4; 2:4, Mich 4:3 where it is parallel to שָׁפַט. In these passages it depicts the activity of a judge or arbitrator, *ie.* one who causes the parties to give an account. So Job laments the fact that there is no מוֹכִיחַ between himself and Yahweh who would lay his hand on both of them to cause them to give their respective accounts, Job 9:33 (*cf.* Gen. 31:42). According to Gemser's list³ the meaning 'correct, rebuke, call to account' is the most frequent and in this sense the usage is not by any means restricted to the law-court.⁴

1. Boecker, *op.cit.*, 45-47.

2. *op.cit.*, 267.

3. *op.cit.*, 192.

4. Seeligman argues that since the development of the verb is 'accuse - reprove - condemn - punish' Job 13:15 cannot be translated 'I will justify (אֲוִיחַ) my ways before him'. He proposes to read וְאֲוִיחַ for וְאֲוִיחַ so as to have Job suggesting that God is unjust in His ways towards him (*op.cit.* 268). This emendation is quite unnecessary if וְאֲוִיחַ is taken as parallel to 'case', understood in v. 3, therefore, the translation would be 'I would debate (the rightness of) my ways to his face'.

The ptep. גֹּזֵל occurs in Amos 5:10 and Isa 29:21 in the expression, גֹּזֵל בַּשַּׁעַר 'the reprovor in the gate'. As shown in Chapter 1 the שַׁעַר 'gate' is regarded as the place for dispensing local justice and the גֹּזֵל בַּשַּׁעַר has therefore some function connected with the administration of justice. The גֹּזֵל of Amos 5:10 is taken by Harper¹ to be either a judge or the prophet but this seems unlikely. Since the entire judicial system is envisaged in this chapter as corrupt *cf.* VSS. 6-7 and 12 ff., it is hardly probable that a judge is meant and since the setting is a purely legalistic one the prophet is not meant. Verse 13 suggests that he who normally does reprove will, under conditions of such corruption, do so no longer since within such a system it is a futile action. In the Isa. passage the גֹּזֵל has a snare laid for him by the עֲרִיץ and צָדִיק² by their giving false evidence and this hardly applies to a judge. The term may be used in these passages to indicate someone who brings accusations of wrongdoing at the local court whether as a good citizen of whom it was expected (*cf.* Lev. 5:1), or perhaps as an official accuser.³ The situation envisaged in Amos. 5:10 is similar to that in Mich. 6:9 where the unjust gain of the rich is at issue. The text reads:

Mich 6:9. קוֹץ יְהוּדָה צִעִיר יִקְרָא וְתֹשֵׁבֵיהָ יִרְאֶה שְׂמֵחַ שְׂמֵחַ וְגַם מִשְׁפָּחַת יִשְׂרָאֵל יִשְׂמְחוּ

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1. W.R. Harper, *Hosea and Amos*, ICC in loc.
 2. These terms frequently occur in legal contexts *cf.* Ps. 1.
 3. On official accusers in the sphere of cuneiform law see above pp. 48 ff.

The RSV follows the LXX in reading, 'Hear, O tribe and assembly of the city' instead of the MT, 'Hear, a rod and who has appointed it?'. The MT makes little sense but the LXX reading requires a radical alteration of the MT. In view of the fact that the verse is set against a background of injustice it is better to point

as הַשֹּׁפֵט 'perverted justice' and מִי יְעִידוּהוּ as מִי יְעִידֶהָ

'who denounces it?' The full verse would then be translated

"The voice of Yahweh calls to the city, and it is sound wisdom to fear his name. Hear!, perverted justice, and who denounces it?"

This translation requires reading Hiph. of עִיד instead of Qal and translating the Hiph. as 'to denounce, make one give an account (of one's actions)'. This meaning of עִיד is borne out by its

use in its other O T occurrences. In all it occurs three times in the O T apart from the proposed reading in the Mich. passage.

In Job 9:19 it is used of 'appointing a time for a trial, calling (someone) to give an account (of his actions)' and this translation

applies equally in the two remaining passages in Jer. 50:44 and

49:19. These last two passages describe an identical picture, that of Yahweh as a lion coming upon the fold, and the question

is posed: מִי יְעִידֶנִי Jer. 50:44 מִי יְעִידֶנִי

Jer. 49:19 'who will call me to give an account (of my action)'.

This meaning is supported by the rest of the verse which reads

'what shepherd can stand before me', 'who is like me?'

If this proposed emendation is correct then Yahweh is asking for someone to denounce the injustice in the land. The person

who would normally perform this function is described, under very

similar moral conditions, in Amos 5:10 and Isa. 29:21 as $\text{מְשַׁעֵר בְּשַׁעַר}$

'the accuser in the gate'.

There is no way of telling whether such **מוֹכִיחַ** were state of local officials or not but Boecker's contention that the local assembly had, "no official persons, no official judge, advocate, or accuser"¹, is purely an argument from silence, and as shown in Chapter 1 the judge at a local level had some official position and stature. The reference to a **מוֹכִיחַ** in Prov. 24:23-25 must be to an arbitrator or judge just as Job. 9:33 since he is said to pronounce innocent or guilty: **הַקֵּר פְּנִיךָ בְּלֹשֶׁט בְּ-טוֹב**
 'Partiality in judgement is not good: **אִמֵר לְרֹשֶׁע צֶדֶק אֲדַם יִקְרָאוּ עָמִים יִזְעַק מִיָּד אֲמִים**

He who says to the wicked you are righteous, him the people will curse and he will be abhorrent to the nations.

לְמוֹכִיחַ יִנְעַם וְעַלְיָהֶם יָבֹא בְרָכָה - טוֹב :
 But he who reproves will have delight and upon him a good blessing will come.'

In considering other officials responsible for bringing criminals to justice mention must be made of the **מַזְכִּיר**. H. Graf Reventlow² suggested that the **מַזְכִּיר** had the office of state solicitor and was to some degree responsible for searching out criminals. Boecker³ rejected this construction though he sees **הַזְכִּיר** as a technical legal term.

1. Boecker, *op.cit.*, 13
 2. H. Graf Reventlow, *Th.Z* 15 (1959) 161-175.
 3. H.J. Boecker, 'Erwägungen zum Amt des Mazkir', *Th.Z* 17 (1961) 212 ff.

Seeligman¹ points out that *מזכיר* in Isa. 43:26, the only passage for which a technical legal usage can be claimed, does not support the idea of a state solicitor with responsibilities for detaining criminals. Schottroff² argues that 'like *קפץ*, *הזכיר* also appears to be used of a process in legal action quite by chance'. Diestel³ concluded that Biblical Israel know 'no authorities..... who could obtain knowledge of crimes committed by state means'. Seeligman agrees with Diestel, 'Wo kein Klager, da kein Richter'.⁴ The *מזכיר* may not appear as a state accuser but the question of the *מוכח בשער* is quite another matter and it must remain uncertain what relationship he had to the local authorities.

C. Motives for Accusation

Landsberger pointed out that accusation or denunciation was viewed in the Assyrian Law as a public duty, neglect of which was subject to punishment.⁵ The public responsibility for accusation in the case of murder is shown, as early as the third dynasty or Ur, in a text dealing with a trial for murder published by Jacobsen.

1. *op.cit.*, 260.

2. W. Schottroff, *Gedenken in Alten Orient und in A. T.* (1964), 263.

3. L. Diestel, 'Die religiösen Delicte in Israelitischen Strafrecht', *Jahrbuch für protest. Theologie*, 5 (1879) 263.

4. *op.cit.*, 261.

5. B. Landsberger, *JCS* 9 (1955) 124, *cf.* also the clauses contained in treaties, *eg.* *VTE* p.24.

He comments, "in the present case, since the widow so pointedly refrained from taking any steps, the initiative may perhaps best be imagined to have come from friends and neighbours alive with suspicions".¹ Szlechter has pointed out that 'Le proces penal sumero-babylonien ressemblait un proces civil'.²

Landsberger, in the work cited above, gave no evidence for his conclusion but Assyrian Law A #40, which deals with the veiling of women, states:

(68) ša KAR. LIL pa-as-su-un-ta (69) e-tam-ru-u-ni i-ba-as-si³
 (70) LU .MES še-bu-te i-ša-ak-ka-an (71) a-na pi-i E.GAL^{lim}
 ub-ba-la-a-si

'Whoever sees a veiled harlot shall seize her. He shall produce witnesses and bring her to the entrance of the palace.' In the case of a man seeing a harlot veiled and not reporting the fact to the authorities he may in turn be denounced by a *bātiqū* 'informer'.⁴ In this case the *bātiqū* is entitled to take and keep the accused persons clothing just as the man who arrests a veiled harlot may take and keep clothing if he is able to prove his accusation against her.

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1. Th. Jacobsen, 'An ancient Mesopotamian trial for homicide', *An. Bib.* 12 (St. Bib. et. Or. III) 139.
 2. *loc.cit.*, 100.
 3. Taken by Driver as a scribal error for *i-ša-ba-as-si* AL, 409.
 4. As stated above p.51, this term is used for a member of the general public acting in a given instance as an accuser.
cf. Landsberger, *op.cit.*, 124.

This introduces the principle of gain for an accuser who is able to substantiate his accusation, a principle already attested in LH and other Old Babylonian texts. In LH #2 a situation is envisaged in which a man has brought an accusation of sorcery against another but has been unable to prove the case. In this event the accused person is obliged to submit to the river ordeal:

(42) ^vsumma ^dID (43) ik-ta-^vsa-sú (44) mu-ub-bi-ir^vsu

(45) E-sú ^vir-tab-ba-al LH #2. 42-45.

'If the river overwhelms him his accuser shall take and keep his house'.¹

-
1. Landsberger JCS 9 (1955) 124 suggests that the literal translation 'house' for *bīssu* is hardly satisfactory since the accused or accuser may not have a house and in the case of the soldier in LH #26 his house cannot be separated from his *eqlum*, *bītum*, and *kirām*. He also rejects the suggestion by Driver-Miles, *BL*, I, 116, that 'private property' is meant since this would be rendered by *makkūrum*, or *būšūm*. He suggests the translation 'family', implying the death of the man himself and enslavement of his family. The evidence for this is not conclusive though the practice is known and it may be safer to retain the translation 'house' as a general vague term.

LH #26 makes the same provision for the accuser who charges a *rēdūm* or a *bā'irum* with refusal to carry out the king's order for service or of hiring a substitute to perform the service for him:
 lu UKU.US ù lu ŠU.KU₆ šu-u id-da-ak mu-na-ag-gi-ir-šu É-sú i-tab-ba-al.

LH #26:7-12

'..... whether a *rēdūm* or a *bā'irum*, that man shall be put to death and the accuser shall take and keep his house'.

As suggested above p.49 the terms *mubbirum* and *munaggirum*¹ describe the same activity. In #26 no mention is made of any sanction against the *munaggirum* in the event of a false accusation but in #2 the *mubbirum* loses his *bītum* ('property') to the accused if the latter survives the river ordeal:

šum-ma a-wi-lam šu-a-ti^d ID ú-te-eb-bi-ba-ās-šu-ma is-ta-al-ma-an
 sa e-li-šu ki-is-pi id-du-ú id-da-ak sa^d ID is-li-a-am É mu-ub-bi-ri-šu
 i-tab-ba-al LH #21 46=56.

'If the river clears that man and he returns safely, he who made the accusation of sorcery against him shall be put to death; he who leapt into the river shall take and keep the *bītum* ('property') of his accuser.'

The same principle operated during the Old Babylonian period at Mari as evidenced by the letter already cited above p. 53 .

1. Von Soden accepted the view that *munaggirum* was an irregular Nt participle from *agārum* and a synonym of *agrum*, GAG #57e and #97m. This must now be rejected. cf. above p.47 and Landsberger, JCS 9 (1955) 123.

The letter is from Yatar-ami king of Carchemish to Zimrilim king of Mari asking him to submit two suspects to the river ordeal.

In this case they had been accused of seditious utterances:

- (13) u a-nu-um-ma a-na dId (14) us-ta-ri-su-nu-ti (15) u LU ma-hi-is qa-qa-di-su-nu (16) an-ni-ke-em i-na si-bi-tim
- (17) i-na-sa-ru LU-MES su-nu-ti (18) 1 ERUM -ka kal-lum (19) it-ti Na-ap-su-na dIM (20) a-na dID li-ir-di-su-nu-ti (21) sum-ma LU.MES su-nu (22) is-ta-al-mu LU ma-hi-is (23) qa-qa-di-su-nu i-sa-tam (24) a-qa-al-lu sum-ma LU-MES (25) im-tu-tu an-ni-ki-a-am
- (26) E HA-su-nu ni-si-su-nu (27) a-na ma-hi-is qa-qa-di-su-nu
- (28) a-na-ad-di-in

'And now I have sent them to the river, and their accuser is kept here in prison. Let one of your slaves, a messenger, with Napsuna Adad escort these men to the river. If these men are saved I will burn their accuser with fire; if the men die, I will give their houses and their people to their accuser.¹

1. cf. note 94. The mention of n^{is}u here does not exclude the possibility that b^{it}um normally includes n^{is}u (this is a letter and not a carefully drafted legal document) neither does it confirm the theory that b^{it}um includes a mans n^{is}u. In the case under consideration the charge is seditious utterances and this is not catered for in the laws.

The principle of rewarding the accuser with the possessions of the accused may have been introduced to encourage the populus to denounce crimes of the sort mentioned above, *ie.* sorcery, sedition, unveiled prostitutes and failure in a public duty¹, but it is noteworthy that a proverb dealing with the role of the accuser in society knows of no such rewards:

[z]u-qa-qi'-pu a-mi-lam iz-qu-ut [mi]-na-a il-qi
(mu-na)m-gi-ru a-mi-lam us-mit [mi-na]-a ut-ti-ir

BWL p.240 (cf. JCS 9 (1955) 123)

AJSL 28 243 (K 4347 ii 22 ff.)

'A scorpion has stung a man, what did it get?

An accuser brought about a man's death, what did it benefit him.'

This reflects a period prior to #LH² in which no reward was given for accusation.

There is no evidence in the O T to suggest that rewards existed for accusation of criminals to encourage the practice.

1. Driver - Miles, *BL*, 1, 62.

2. The tablet, K 4347 + 16161 comes from Assurbanipal's library. The Sumerian column is lost at the point in the text under consideration.

צֶהֱלֵק יָגִיד רָעִים וְעֵינֵי בְנָיו תִּכְלָבָה ה :

Job 17:5:

'He who denounces friends for a share,¹

The eyes of his children shall fail.'

indicates that the accuser stood to gain from a successful conviction of his friends, but the background is vague and could mean that by removing someone likely to gain a share in some property thereby gains his share himself.

Psalm 50:19-20 deals with the case in which a man makes charges against his own brother:

תִּשָּׁבַב בְּאָחֶיךָ תִּדְבֹר רָבָּ | -אָגִיד תִּתֵּן-זֶפֶיךָ
Psa. 50:20

'You sit to speak against your brother,

To accuse your mother's son'

Briggs has pointed to the fact that in this section of the psalm, which deals with Yahweh's judgment for breach of covenant, three representative prohibitions or 'words' are 'taken from the primitive tablet of the covenant'.³ This being so the verse cited above deals with violation of the ninth commandment, *ie.* regarding false witness of false accusation.⁴

1. Driver & Gray, *Job*, ICC, 152 suggest that the noun צֶהֱלֵק has developed the meaning 'prey' from an original meaning 'share, portion'. There is no evidence to support their conjecture and the meaning 'share, portion' makes sense in the present context.

2. זֶפֶיךָ is ἀπ. λεγ.

3. C.A. Briggs, *Psalms*, ICC 420. *cf.* The selection of דְּבָרֵי מִן made by Jesus in Matt. 5:21-37 as representing the whole law.

4. Briggs, *ibid.*, suggests that the accusation is made 'before ministers of justice'.

What is not clear is what, if anything, the accuser hoped to gain.

The accusation which was clearly false may have been simply capricious.

Deuteronomy lays down a rule that even close relations are not to be spared when they depart from true Yahweh worship to follow strange gods but are to be slain as a public duty:

(7) כִּי יִפְּתֶה אָחִיךָ בֶן-אִמֶּךָ אוֹ בֶן-בְּרִיתְךָ אוֹ אִשְׁתְּ-יְהוּיֶךָ
 אוֹ רֵעֶךָ אֲשֶׁר פִּנְפֹּשֶׁת בְּסִדְּרָא לֵאמֹר נִלְכָּה וְנַעֲבֹדָה אֱלֹהִים אֲחֵרִים
 אֲשֶׁר לֹא יָדַעְתָּ אֶתְּהָ וְאֶבְרִיתְךָ: מֵאֱלֹהֵי הָעַמִּים אֲשֶׁר
 קְרִיבֵיכֶם:
 (9) לֹא תֵאָבֶה לוֹ וְלֹא תִשָּׁמַע אֲזִינוֹ וְלֹא תִחֹס עֵינֶיךָ עָלָיו
 וְלֹא תִחְמוֹץ וְלֹא תִכְסֶה עָלָיו: כִּי הִרָג תִּהְרַגְנוּ. וְגו' //

Deut. 13:7-10

'If your brother, the son of your mother, or your son, or your daughter, or the wife of your bosom, or your friend who is as yourself, entices you secretly, saying, "Let us go and serve other gods," which neither you nor your fathers have known, from the gods of the nations which are round about

You shall not listen to him nor heed him nor shall your eye pity him nor shall you spare him, nor conceal him. You shall surely kill him.'

CHAPTER 3

COURT PROCEDUREI. Terminology:

As was pointed out in the introduction, pp 2-5, the O T gives no clear picture of the course of judicial proceedings in Israel.¹ There are, however, a number of passages in the O T, including prayers and prophetic oracles, in which aspects of Israelite court procedure form the background against which the writer or speaker conveys his message. Since, however, no comprehensive knowledge of these proceedings is available it is proposed here to utilise Akkadian legal terms, whose context and significance is known or determinable, to act as an external check on speculation with regard to Hebrew meanings. By contrasting and comparing the Akkadian and Hebrew terms for each stage of the proceedings it may well be possible to be more certain about the background of the Hebrew terms and their significance and thus, in retrospect, reconstruct a typical lawsuit. It will become clear in the course of this process of comparison and reconstruction that certain of the Akkadian and Sumerian terms have had to be reinterpreted and the comparison with Hebrew material has often been helpful in this.

A. Institution of proceedings(i) Making a claim.

(a) *baqārum*,² *ragāmum*, *ṣabātum*, *gerūm*. The terms *baqārum*, *ragāmum*, and *ṣabātum* which occur in OB documents and signify the raising of a claim have been dealt with in detail by Walther³ and Lautner.⁴

1. cf. J. Pedersen, *Israel*, I-II, 400, 410; B. Gemser, *VTS* 3 (1955) 122-3.

2. The verb is *baqārum* in OB while in later periods it is *paqāru*
Lautner, *Streitbeendigung*, 6.

3. Walther, *Gerichtswesen*, 213.

4. Lautner, *op.cit.*, 6ff.

Lautner pointed out that ~~rag̃amum~~ and ~~baq̃arum~~='to claim' but *rag̃amum* has the wider, more general meaning while *baq̃arum* is used in a precise technical way of claims of ownership "...mag es sich dabei um Eviktion oder um Retrakt handeln".¹ Furthermore *baq̃arum* is concerned with objects and has the object in question as a direct object. *rag̃amum*, on the other hand, refers to persons and has as its object the person claimed against.² In concluding contracts and arriving at settlements one party is frequently obliged to undertake never to raise a claim again and this is reflected in the designation of the type of tablets known as *tuppi lâ rag̃amim* "tablet of no claim".

ṣabātum will be dealt with later in this chap. on pp 160ff. It is used of seizing a person as a distress so as to initiate proceedings or of seizing the defendant himself to compel him to come to court.

gerûm 'be hostile', 'start a lawsuit', has a semantic range corresponding to the Hebrew דָּרַג but in a legal setting is not as frequent as *rag̃amum* and *baq̃arum*.³ In OB it is used both intransitively and with a person as object, eg. *PN. PN2 u PN3ana HALA igderûma* 'PN, PN2 and PN3 went to court about the division (of the property).' *CT 4 9a:5. eq̃lam ṣa itti mārē PN PN2 iṣ̃am̃u PN3 mār PN ana eq̃lim ṣadād̃im PN2 igrē* 'with regard to the field that PN2 bought from the sons of PN, PN3, a son of PN, took PN2 to court for incorrect measurement of the field'. Gautier *Dilbat* 6:8. In SB and NB the verb is used in connection with *dīnu*, ie. *dīna gerû* with the meaning 'bring a suit'.⁴

1. *ibid.*, 8.
2. Lautner, *op.cit.*, 9.
3. Walther, *op.cit.*, 213.
4. see *CAD* 5, 61-2.

(b) קרא, צעק

Corresponding to the Akkadian terms discussed above are the Hebrew verbs קרא and צעק. Seeligman, commenting on these two words, says, "when a crime occurs the one whose life or welfare is damaged raised a cry of alarm."¹ A woman who had left her land in time of hardship returned and cried (צעק) to the king in order to have her lands restored, *ie.* she claimed them legally (II Kings 8:3). It is not clear from the context or from any O T parallel passages whether the property had been confiscated by the crown or was in private hands.

The breakdown of justice in Israel in Isaiah's time is depicted in Isa. 59:4:

אִין קְרָא בַדִּיק וְאִין נִשְׁפָּט בְּאֱמוּנָה :

'No one sues justly, No one submits to judgment² honestly'

The terms קרא and שד 'violence, harm' occur as the objects of קרא and צעק with legal connotations. According to Seeligman³ קרא implies a threat to the person himself while שד is the violence of robbery or theft. This observation is borne out by Jer. 40:35, Hab. 2:8, 17 where קרא is parallel to דמ/דמים . In Ezek. 9:9

the expression מלאו את הארץ חמס is parallel to מלאו את הארץ דמים 'they have filled the land with violence.'

With reference to an appeal to a tribunal for justice , קרא is associated with צעק in Job 19:7 where Job complains that his access to justice has been barred by God;

הֵן אֶצְעַק חֲמָס וְלֹא אֶעֱנֶה
אֲשׁוּעַ וְאִין אֶשְׁפָּט :

1. I.L. Seeligman, 'zur Terminologie fur das Gerichtsverfahren', *VTS* (1967), 257; my translation.
2. On this translation for נשפט see below p. 66f
3. *loc.cit.*, 257.

'Behold I cry violence and am not answered. I call aloud but there is no justice' Job 19:7. Hab. 1:2 reads:

עד אנה יהוה שועתי
ולא תשמע
ולא תציל
ולא תשוע

'How long, O Yahweh, shall I cry aloud and you not answer? Cry violence and you not deliver?' The setting for the Habakkuk passage is similar to that of Job 19:7 i.e. the breakdown of justice

עצ כן תפוג
תורה ולא יצא
ולא תציל
ולא תשוע
ולא תציל
ולא תשוע

'Therefore law is slacked and justice never goes forth. For the wicked surround the righteous, therefore justice goes forth perverted' Hab. 1:4.

חמס and שט are linked in Jer. 20:8:

כי אהי אומר חמס ושל וגו'

'For whenever I speak I cry violence, I call out destruction'.

The terms are again used as synonyms in Jer. 6:7

חמס ושל
לשמע כה וגו'

'violence and destruction are heard in her?'

With reference to goods aquired as a result of the perversion of justice and denial of legal rights, Amos 3:10 reads:

ולא ידעו עשות נכחה נאם יהוה האוצרים חמס ושל
בארמנותיהם

'They do not know how to behave properly, says Yahweh, those who store up the reward of violence and robbery in their strongholds?'

The same conditions obtain in the situation reflected by Ezek. 45:9 :

חמס ושל הפירו. ומשפט וצדקה עשו. הריא. גרשתיכם מעל
עמי נאם אלני יהוה

'Put away violence and oppression and practice justice and righteousness; cease your evictions of my people, says Yahweh the Lord.'

Here the people being addressed are the rulers in whose hands the administration of justice rests.

(ii) Entry into court

(a) kašādum, qerēbum, alākum, sanāqum

kašādum is used in legal contexts in the sense of 'to approach (a legal authority)'¹; DN *dayyān kittim niksudma* PN *kīam iqbi umma* 'we approached DN the true judge and PN declared thus:' CT 29 43:27 Walters² points to the use of *kašādu* in NBC 5466, 15, in a letter from one judge to another as indicating the meaning 'attend to (a matter)' and this is the sense given to the phrase *awātam kašādum* by Finkelstein³ as it occurs in the MA *šulmānu*-texts. That the action expressed by the verb *kašādum* in legal proceedings is subsequent to that of making a claim, *ragāmum*, is suggested by the expression: *itūru irgumūma* PN *iksūdūma* *dīnam usāhissunūti* 'they made a fresh claim and approached PN he rendered a verdict'⁴ CT 2 46:11 *sanāqum* is used in the same sense as *kašādum* i.e. 'drawing near to (someone for judgement)'. It occurs with *dayyānū* in OB; *ana dayyānī i nisniq* 'we shall go to the judges'. ABB 3 2:18, and this is followed by *a-wa-ti-ni li-mu-ru-ma* 'let them examine our case'.

1. see CAD 8, 276.

2. S.D. Walters, *Water for Larsa*, 105.

3. J.J. Finkelstein, 'The Middle Assyrian *Šulmānu*-Texts', *JAOS* 72 (1952) 80n. 26.

4. On the expression *dīnam šūhuzu* see below p. 138 ff.

The verb *sanāqum* is used with named persons as judges in *AT* 8:11-14:

(11) *mahar Niqmepuh* *isniquma* 'they drew near before Niqmepuh', and it is found coupled with *dinum* in the expression *ana dini isniqū* 'drew near in judgement' *PRU* 4, 118:6, cf. *RU* 4, 106:b8 From these references it will be seen that like *kasādum*, *sanāqum* is used after the notice that a claim has been raised and before the statement that the judges began their investigations.

mahārum and *alākum* are also used of appearing in court in the same way as *kasādum* and *sanāqum*. Leemans notes that *mahārum* is used in the common formula for appealing to the king for a trial: *šarram imhuru*.¹ *alākum*, like *kasādum* and *sanāqum* has a wide range of meaning but it too is used in a legal context to indicate appearance in court following accusation or the raising of a claim. *ana dayyanī alākum* 'come to the judges' i.e. 'appear before the court', occurs in Schorr, *Urunden* 259:5: *anum-ba-ni a-na si-im-da-at šar-ri ib-qu-ur-ma a-na DI.KU. MES il-li-ku-ma* 'PN raised a claim in accordance with the royal regulation and went before the judges'.

qerēbum is used as a parallel expression to *sanāqum*² in a text from Ugarit dealing with a claim for compensation following the death of some (Hittite) merchants:- (5) *u 'ta-li-im-mu* (6) *it-ti māri^{am} al ap+sū-ú-na* (7) *a-na di-ni iq-ri-bu* (8) *di-na is-ni-qu-ú-ma*. 'PN came to court with the men of N, they appeared together in court' *PRU* 4, 106. b5-8.

(b)

A number of the Hebrew expressions for entering court have the same underlying idea of 'coming' or 'drawing near (to a judicial authority)' as the corresponding Akkadian expressions, cf. the English 'go to court'.

1. Leemans, 'Hammurapi as judge', 116.

2. cf. von Soden, *ATW*, 1021 a

Just as *sanāqu* and *qerēbu* were used as parallel expressions in PRU 4, 106 b7-8 so the Hebrew verbs קרב and קָרַב are used as synonyms in a number of O T poetic passages where the literary device known as 'parallelism of members' is employed.¹ They are linked in parallelism in:

יָגִישׁוּ אֶד יִדְבְּרוּ יַחְדָּו לְמִשְׁפָּט נִקְרְבוּ :
 יִגִּישׁוּ אֶד יִדְבְּרוּ יַחְדָּו לְמִשְׁפָּט נִקְרְבוּ

'Let us draw near now and speak,

Let us come together for judgement' Isa. 41:1, and again in :

קָרְבוּ רִיבְכֶם יֹאמֶר יְהוָה הַגִּישׁוּ עֲצוֹמוֹתֵיכֶם יֹאמֶר מֶלֶךְ יִעֲקֹב :

'Bring your case near, says Yahweh,

Bring forward your arguments, says the King of Jacob.'

Isa. 41:21. Yahweh's threat to denounce and punish the wicked in

Judah in Malachi's day is couched in legal language in which קרב

is employed:

וְקָרְבוֹתֵי אֲלֵיכֶם לְמִשְׁפָּט וְהֵייתִי עִד אַמְהָר וְגו'
 וְקָרְבוֹתֵי אֲלֵיכֶם לְמִשְׁפָּט וְהֵייתִי עִד אַמְהָר וְגו'

'I will draw near to you for judgement

And will be a swift witness' Mal. 3:5, a situation in which the emphasis is on Yahweh as an opponent at law not as a judge.

The Deuteronomic procedure for settling private disputes is outlined as follows:

כִּי יִהְיֶה רִיב בֵּין אַנְשִׁים וּבָגִישׁוּ אֶל הַמִּשְׁפָּט וְשִׁפְטוּ יָד וְהִצְדִּיקוּ
 אֶת הַצְדִּיק וְהָרְשִׁיעַ אֶת הַרְשָׁע :

'If there exists a dispute between men and they enter into litigation then the judges will judge them justifying the innocent and condemning the guilty'. Deut. 25:1.

Here the expression רִיב, which can mean a legal case, a complaint, or simply a quarrel of any kind, is used in the sense of 'legal dispute, claim'; and where this exists and is firstly voiced by one or both

1. A number of such passages in Deutero-Isaiah are listed by Köhler, BZAW 37 (1923) 113 under, 'Die Ladung vor Gericht'.

parties then הָגִישׁ is employed to indicate the stage of the proceedings where the רִיב come to court (אֵלֶּיךָ מֵשָׁפֵט). The verb אָבֹא also indicates motion and signifies, like קָרַב and הִגִּישׁ, appearance before the legal authorities. Job complains that Yahweh is not likely to appear in court with him and indeed there is no one able to decide between them (9:33 אֵין מוֹכִיחַ):

כִּי לֹא אִישׁ כְּמוֹנִי אֶעֱנֶהוּ וְיָבֹא יַחְדָּו בְּמִשְׁפָּט :

'For he is not a man like me, that I might answer¹ him, That we might come to court together.' Job 9:32. On the other hand Job's 'friends' view his sufferings as the result of just such a 'coming to court':

הֲעִירָאתְךָ יִכְיֶהוּ יָבֹא עִמָּךְ בְּמִשְׁפָּט :

'Is it for fear of you that He reproves you, That He enters into judgement with you' Job, 22:4 . According to the friends Job's call for a legal confrontation with Yahweh is too late, it has already taken place.

Apart from these verbs of motion the term מִשְׁפָּט² is also used of entry into the court.

The breakdown of justice and misuse of the courts is depicted by Isaiah :

אֵין קָרָא בְּצֶדֶק וְאֵין מִשְׁפָּט בְּאֵמֶת :

'No one brings a case justly No one submits to judgment honestly' Isa. 59:4.

1. For the significance of the verb מָנָה see below pp. 100f.
2. According to J. Van der Ploeg, 'Shaphat et Mishpat' OTS II, 146, the root idea of מִשְׁפָּט "included all the actions which accompanied the primitive lawsuit".

The Niphal of שָׁפַט is used by itself to indicate submission to legal process. This is well illustrated by the Psalmists' confidence that if the righteous man submits to trial Yahweh will see to it that he is not unjustly condemned:

: אֵל יְרֵשִׁי עֲצוֹן רַחֲשֵׁפֶט י-

'(Yahweh) will not let him be condemned in his trial' Ps. 37:33.

(iii) Agreement to Litigate

Kohler¹ and McKenzie² see it as the plaintiffs' responsibility to bring the defendant to court and to secure from him an agreement to litigate. Falk sums up this view;

"Early justice being a form of mediation, no court could be moved without the filing of a private claim and the tacit submission of the defendant to the decision".³ This view presupposes that the judge's role was purely one of rendering a decision which he was unable to enforce on either party. In fact, however, whenever judges' activities are dealt with in the O T it is clear that they possessed power and authority to enforce their decisions on the parties. This is illustrated by Deut. 25:1-3 where those who have a dispute are liable to appropriate punishment by the judges after the latter have given a decision. There is here no mention of a refusal to abide by the courts decision. This indicates that the plaintiff need not have obtained the defendants' agreement to litigate but merely applied to the court for a hearing. The responsibility in this case for ensuring the defendants' compliance with the summons would rest with the court.

1. *op.cit.*, 110.

2. D.A. McKenzie, 'Judicial procedure at the town gate', *VT* 14 (1964) 101.

3. Z.W. Falk, *Hebrew law in Biblical times*, 69.

In instances in which the accused readily agreed to litigation he might have challenged his opponent to go to court with him in terms involving some of the verbs dealt with in this section.¹

Landsberger² and later Yaron³ have argued that the Akkadian term *dīnam sūhuzum* is one implying agreement by the parties in a given case to submit to the powers of the court. Yaron argues, "*sūhuzum* is a causative form: while the judges are indeed the express or implied formal subjects, it is the litigants (or one of them) who are caused to do something, namely to proclaim their readiness to abide by the decision which will be rendered in due course."⁴ This interpretation cannot, however, be maintained in the light of CT 29 43:22; *ina s̄am̄ d̄ānim PN, PN2, PN3, PN4 u PN5 dayyān bābili ina libbū kalakkim us̄āhizūš̄urūti dīnam s̄ātu ul ilqū* 'In the second lawsuit, PN, PN2, PN3, PN4 and PN5 judges of Babylon gave a decision in the storehouse, but they refused to accept the decision'.⁵ From this it can be seen that the parties involved in the case had made no prior agreement to abide by the judges decision as finally binding. For a suggested new translation of the expression and further implications see section E of this chapter, 'The verdict'.

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1. cf. McKenzie, *loc.cit.*, 100-1.
 2. *Symbolae Koschaker*,
 3. R. Yaron, *The Laws of Ešnunna*, 81.
 4. *ibid.*
 5. cf. CAD 1, 178b, also Ungnad BB 218.

B. Presentation of a case

Following their appearance in court and prior to their presentation of testimony; tangible evidence, tablets or witnesses, the parties in a suit set forth their case orally.

In Akkadian the oral nature of this part of the procedure is implied in the use of the verb *dabābu* 'plead, speak':

inūma atta u PN mahriya tadbubā

'When PN and you pleaded (these cases) before me TCL1 34:5 (OB)

imēre ša PN ša ana šāšu idabbubū müssiršunu

'release PN's donkeys that they are claiming for him' AT 108:4

annimi itti PN adbubumi imērsu eltiqi

'Yes, I did plead against PN, and I took his donkey' U C P. 9

p.411, 32.

That the term does still, in actual Babylonian procedure imply an oral pleading is shown by:

salipta ušadbibu

'he has made someone utter a false statement'.

Surpu II 14.

While the term implies the oral stage of the legal process prior to the presentation of testimony it can nevertheless be used in a wider sense to cover the entire process:

'let those who have a right or a claim bring their tablets and deposit them before the magistrates, *lidbubu luxakkiūma lilqiu*, plead their case, obtain clearance and take over.

KAV 2 iii 18 (AL# B6.)

For OA the verb *awû* is used where *dabābu* would be employed in later Assyrian and Babylonian.

izzi ina patrim ša Aššur tam'am ina amūtim la awiakkuni

'come, take an oath by the dagger of Assur that I do not need to plead against you in court about the *amūtu* metal'. CCT 4 22a:23.

The OB form of the same verb is *atmū* 'discuss, argue' and it is used in parallel with *dabābu*:

*ana pīhat eperē damqūtīm ittika atau ana elippim la malītīm
ittika adabbub*

'I will argue in court with you for your failure to deliver good rubble, I will plead against you for any boat not full.

TCL 18 145:12.

Like *dabābu* the verb is used of the oral stage of a suit when the parties present their case.

Having heard the case of the plaintiff the defendant is given an opportunity to answer (*apālum*) and again the verb is used of an oral reply:

PN u PN2 *turdamma bēl awātīšunu līpulu*

'send PN and PN2 here so that they may answer their opponent in court'
Sumer 14 55 No. 28:20 (Harmal) OB.

The basic meaning of *apālum* is to 'give satisfaction' and this too is the sense of the Hebrew ענה.¹ It is used, as was noted, of witnesses giving a satisfactory statement; it is used frequently in the Psalms of Yahweh giving a satisfactory response to the Psalmist's prayers, and it is used in the present context of giving a satisfactory reply to the charges made by one's opponent at law. The sequence of events in the trial up to this point is summarised in Job 13:22 :

קרא ואנכי אענה או אדבר והשיבני:
אם צדקתי ישיבני ואם לא ישיבני

'make a claim and I will answer you or let me speak and you reply to me'.

The verse reflects Job's frustration at not being able to argue his cause with Yahweh under any conditions. Even if he were granted a hearing he is sure that:

אם צדקתי ישיבני ואם לא ישיבני

1. Note the illustrative expression : והכפת ענה הכסף : 'money satisfies all (claims)' Eccl. 10:19.

'Even though I am righteous I could not answer him (I must appeal for mercy to my opponent at law)' Job. 9:15.

The oral nature of the presentation of the case is again highlighted when one is urged to plead the case of the dumb:

פֶּתַח פִּיךָ לְאֵימָת אֶל דָּיִן כָּל בְּנֵי תְבוֹנָה
פֶּתַח פִּיךָ לְשֹׁפֵט צַדִּיק וְדָן עֲנִי וְאֲבִיּוֹן :

'open your mouth for the dumb, for the cause of those who are perishing. Open your mouth, judge righteously, maintain the rights of the poor and needy' Prov. 31:8-9.

Speech is implied in the use of קָהַל 'declare' in Isa. 45:21

וְהִגִּידוּ וְהִגִּישׁוּ 'state your case and advance your arguments' and in Isa. 44:7: יִקְרָא יְהִיזֵה וְיַעֲרֹכֶה 'make your claim (to be like Yahweh) state your case and arrange your arguments'.

עֵרַךְ does not imply speech but depicts the proper arrangement or presentation of the facts,

הִנֵּה-נָא עֲרֹכְתִי גִשְׁפֹּט יָדַעְתִּי כִּי אֲנִי אֶצְדֵּק :

'Behold I have set forth my case and I know I shall be in the right' Job. 13:18.

אֶעֱרֹכֶה לְפָנָיו גִּשְׁפֹּט וּפִי אֶצְמָא תוֹכַחֹת
אֲדַעַה גִּשְׁפִּים גִּעְנָנִי וְאֲבִינָה מָה - יֹאמֶר לִי :

'I would lay my case before him and fill my mouth with arguments. I would know what he would reply and understand what he would say to me' Job. 23:4-5.

This last quotation shows that while עֵרַךְ is not itself a verb of speech when used in the context of presentation of a legal case speech is implied.

The remaining Akkadian and Hebrew expressions for presenting a case at this verbal stage of the proceedings do not in themselves indicate speech.

awātām ṣakānum is used in OB times to express this idea:

aliānīmma awātīkuru ṣa nāsiātunū maḥar wardī ṣarrim ṣukun

'go to the palace and present your case with which you are concerned before the kings' servants' YOS 2 92:26.

The Hebrew ריב is used at various stages of the lawsuit one of which is that under discussion.¹

Job 31:35 mentions Job's טָרַף 'seal', perhaps upon a document containing a statement of his case. His adversary has written such a document : כָּפַר כְּתָב אִישׁ רִיבֵי . This, as Boecker points out represents Egyptian influence on the book of Job, as this was regular Egyptian practice, while the Hebrew proceedings were verbal.²

Hebrew procedure knew a system of cross-questioning of one party by the other as is indicated by :

צַדִּיק קְרָאשׁוֹן בְּרִיבוֹ וְיָבֵא רַעְיוֹן וַחֲקֵרוּ :

'He who pleads his case first seems righteous Until his opponent comes to examine him' Prov. 18:17, Ps. 35:11 also envisages a cross questioning procedure this time by the accuser not the defendant as in Prov. 18:7.

יְקוּמוּן עַדֵי חַמַס אֲשֶׁר לֹא יָדַעְתִּי יִשְׁאַלְנֵנִי :

'False accusers rise up who question me about things I know nothing of'

Note that the עַדֵי are חַמַס ie. they mean harm to the person accused who knows nothing of their false claims and charges.

1. cf. Gemser VTS 3 (1955) 128; A Gamper, Gott als Richter, 185.
2. Boecker, Redeformen, 14.

Driver suggests that the verb אָרָם may imply that the accusers or witnesses sat prior to giving evidence. The verb means more than literally 'to rise' and is used of the judges who appeared (אָרָם) to judge Israel. Nothing positive can be said about the posture of the witnesses or the parties at this stage except that they stood for at least part of the time.

C. Testimony and Proof

This section will examine the various types of testimony presented to the court by the parties in an attempt to prove their statements. Apart from their presentation of witnesses the parties were at liberty to bring documents and tangible evidence to substantiate their case. Each of these categories of testimony will be examined and an attempt made to establish the relative importance of each in Israel and Mesopotamia.¹

(i) Tangible Evidence

In OB the idiomatic expression, *bukānam sūtuqum* 'to hand over the pestle', is used in connection with the sales of real estate or slaves to indicate that the transaction has been completed. Whether or not any *bukānum* was actually transferred in OB times is not clear from the available references, but no doubt the phrase originally applied to an actual transfer of a *bukānum*. By his possession of the *bukānum* the buyer was free from claim against his purchase: *itti PN FN₂ isam* GĪS.GAN.NA IB.TA.BAL *ina warkāt ūmē awīlum ana awīlim ul iraggam*. 'PN₂ has bought (a plot of land with a house on it) from PN, the sale has been concluded, no one may institute proceedings (concerning it)'. BIN 2 86:9.

Quite what method was employed to distinguish one pestle from another is not known but they must have had some distinguishing mark characteristic of the seller of the goods.

It is interesting to note that a method of taking a public oath in OB times was by showing (var. breaking) the pestle in the *puhrum*:— *māmīt GĪS bukānu na puhrim sūpū* (var. *hepū*) 'the oath of showing (breaking) the pestle in the assembly' *Šurpu* III 36.

1. For some Hebrew examples cf. Z.W. Falk, *VT* 11 (1961).

From this it will be seen that the *bukānum* could be presented in court to counter a claim on the property at issue or, though the procedure is not explicit, it might be used in the local court in an oath taking ceremony.

The O T story concerning Tamar and her father-in-law Judah, Gen. 38:1-26, provides an instance in which tangible evidence was used in much the same way as the *bukānum* of the OB period. In the O T story Judah offers Tamar, who is disguised as a harlot, a kid that he might have sexual relations with her. As a pledge he leaves his 'seal and cord' (*וּפְתִילֵי וְחֹמֶת*) and staff with her promising to send the kid in due course. Tamar is not to be found to receive the kid when it is sent and has become pregnant by Judah. When it becomes clear that she ~~was~~ pregnant during her widowhood Judah sent for her to have her burned to death for practising harlotry. Tamar confronted Judah with the 'cord and seal' and the staff which he was forced to acknowledge as his. In this event Tamar must be pregnant by her father-in-law and is thus shown to have been anxious to keep the paternity of her children within the family. Judah has to acknowledge that she has been more careful for the continuation of the family tree than he was himself.

As Spelsler remarks the two nouns 'seal and cord' probably represent a hendiadys "something like 'seal on the cord'"¹ He regards this as referring to a cylinder seal and the staff as another means of identification. It seems likely, as D. Kidner suggests,² that the staff was carved and this may also have been the case with the OB *bukānum*.

1. E. A. Speiser, *Genesis*, Anchor Bible, New York, (1964), pp. 298-9.
2. D. Kidner, *Genesis*, Tyndale OT Commentaries, London (1967) p. 189.

At any event the use to which the *bukānum* and the staff and 'cord and seal' were put is strikingly similar. Both objects were presented as proof of a transaction having taken place. It must, of course, be acknowledged that the conditions prevailing in the O T story are not, like the OB context, those of a strictly commercial venture. All that can be said is that in both cases real or tangible evidence, as opposed to documents or witnesses, was accepted as admissible by a court.¹

Another type of tangible evidence involved the presentation of the remains of a victim by the person responsible to its owner for its welfare. This process is clearly outlined in the stipulations of Exod. 22:10ff. This passage relates to goods and animals stolen or damaged while in the care of persons other than the owner. If the owner has committed the animal to someone to care for it and it is stolen or dies or is driven away during that time the person in charge of the animal is obliged to take an oath to the effect that he in no way had a hand in the mischief. The owner is obliged to accept this oath and no compensation is payable, Exod. 22:9-10 (Heb.). If, however, the animal is stolen from the person in charge then the owner may claim restitution, v. 11 (Heb.). The passage continues v. 12 (Heb.)

אז שיהי יסורף באהוי עד השרפה צה יש צח

'If it is torn apart he shall bring the carcass, he shall make no restitution.'

Here it is sufficient for the dead animal to be produced as evidence (*ṭy*) of the fact that it had been attacked by wild animals and killed in order that the depositee should be free from claim. A knowledge of this same practice is presupposed by the statement of Jacob,

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1. Judah acting as head of the clan was in effect conducting a hearing, the outcome of which could have been the administration of the death sentence.

Gen. 31:39:

טרפה צא הביאתי אליך אזכר אחשבה מידי תבקשנה

הנבתי יום וגנבתי לילה :

'I brought no torn animals to you, I myself bore the loss of them; from my hand you required it, whether it was stolen by night or day.'

This same topic of hiring or being charged with the care of animals is dealt with in LH# 244-267. While no explicit mention is made of the production of a carcass in the event of the animal being killed by wild animals it is implicit in the 'laws'. Driver has shown that where a hirer is concerned he is merely obliged to produce a carcass if the animal is killed by wild beast in the field to prove his innocence, but the shepherd has to prove that the animal was in the fold when the beast attacked and also produce the carcass.¹ In this case Jacob's mention of 'day and night' is significant for even though as shepherd he could have produced the carcasses of animals killed in the fold at night and had Laban bear the loss, he claims not to have done so.

The presentation of tangible evidence operated also in the case of Joseph when his brothers claimed that he had been killed by a wild beast, Gen. 37:29ff. In this case they presented Joseph's blood stained coat as evidence of the fact that he had been torn to pieces by a wild beast:

זאת מצאנו הפר-נא הפסנת בנך הוא אע צא : ופירה ויאמר קמות בני חיה רעה אכלתהו. טרף טרף יוקנא :

"We have found this, see whether it is your son's robe or not. And (Jacob) recognised it and said, 'It is my son's robe, a wild beast has devoured him, Joseph is utterly torn to pieces.'" Gen. 37:32-3. In this case the blood stained robe was enough to convince Jacob of Joseph's death and he was forced to accept his sons' testimony as to the circumstances.

1. BL, I, 438-9.

One other case in which tangible evidence provided the grounds for acceptance of a case was that involving the Levite's concubine who was killed by the Benjamites (Judges 19). The Levite sent a part of her body to each of the tribes of Israel, who, on the basis of this tangible evidence, accepted his story, and demanded vengeance on Benjamin. (Ch. 20).

The court at the city gate is the venue for the presentation of the *בְּתוּלִים*, 'tokens of virginity', according to Deut. 22:13ff. In this case a husband who claims to have discovered his wife not to be a virgin when they come together must have his claim countered by the bride's parents who are obliged to produce tangible evidence of their daughter's virginity to the city elders at the gate. The father claims:

אֵלֶּה בְּתוּלֵי בְּתוּלֵי בְּתוּלֵי 'these are the tokens of my daughter's virginity' *וְפָרְשׁוּהָ שָׁמָּה לְפָנֵי זְקֵנֵי הָעִיר* And they shall spread the garment: before the elders of the city, Deut. 22:17. It is not clear what features associated with this garment could make it certain that the girl was a virgin. Driver¹ suggests that the *שֵׁט* is better translated 'sheet' and that it is the presentation of the blood stained bed clothes of the wedding night which provides the evidence of virginity. Despite his citation of modern parallels to this practice in the Near East, this must be discounted as the sense of the passage. In the first place the modern parallels he cites do not involve the presentation of the bed linen as legal evidence and furthermore the parents are not in possession of the linen in these cases. Furthermore, the term is used to describe female garments in Ruth 3:3, and in II Sam. 13:18 the virgins who are daughters of the king are clothed in long sleeved garments, probably to distinguish them as virgins.

1. S.R. Driver, *Deuteronomy*, ICC. pp. 254-6.

When Tamar was raped by Amnon she tore her virgins' garments, a sign of distress. Though no further evidence can be adduced to show conclusively that tearing of virginal garments in the event of pre-marital loss of virginity was a regular feature in Israel, it remains a possibility. If this were the case then the presentation of a virginal garment intact to the elders would be considered proof of pre-marital virginity.

No equivalent conditions are catered for in the Babylonian Laws nor, despite the existence of an extensive section devoted to virgins, in the Assyrian Laws. This could, of course, be accounted for by the fact that virgins in Mesopotamia wore no distinctive garment.

(ii) Documentary Evidence.

(a)

The importance of documents as a proof of ownership is illustrated in the case of the Babylonians by a clear warning contained in LB# 7:

- (41) *šum-ma a-wi-lum* (42) *lu KÙ.BABBAR* (43) *lu GUSKIN* (44) *lu ÌR*
lu GEMÉ (45) *lu GU₄ lu UDU* (46) *lu ANŠE* (47) *ù lu mi-im-ma šum-šu*
 (48) *ina gá-at DUMU a-wi-lim* (49) *u lu ÌR a-wi-lim* (50) *ba-lum ší-bi*
 (51) *ù ri-ik-sa-tim* (51) *iš-ta-am* (52) *ù lu a-na ma-sa-ru-tim*
 (54) *im-hu-ur* (55) *a-wi-lum šu-ú* (56) *šar-ra-aq id-da-ak.*

'If a man has bought silver or gold or a male or female slave or an ox or a sheep or an ass or anything whatever from a man's son or a man's slave or has received them for safe keeping without witnesses or a contract, that man is a thief; he shall be killed.'

This section of the laws is placed by the legal draughtsman between # 6 and # 8 both of which deal with stolen property and the receipt of stolen property. The present section in fact deals with the same subject for the persons who make the deposit or sell the moveable object have normally no right to do so. This interpretation involves reading

mār awīlim in the present case as 'a free man's son' as does Driver¹, and contra Koschaker's 'free man'². Neither the slave nor a man's son may dispose of his property without special permission and the same applies to a man's wife in *AL* #4 and #6. In this latter case anyone receiving goods from a man's wife, without his permission, either for safekeeping or by purchase was liable to corporal punishment or a fine. *LH*# 165 dealing with real estate as opposed to moveable property lays down that a father who wishes to bestow a special and additional part of his real estate on a favourite son must, during his lifetime make out a *kunukkum* 'sealed tablet' indicating his wishes. His favourite son is, at his father's death, able to take the portion outlined in the tablet before sharing the remainder with any brothers he might have. The gift in question (*qīstum*) remains the fathers property during his lifetime. This *kunukkum* is essentially the same class of document as the *tuppi šimti* 'tablet of destiny', *ie.* 'will, testament' known from Nuzi.

While *LH*# 7 relates to moveable property the drawing up of contracts of sale are much more common when rcal estate is concerned. As Driver³ points out, it is difficult to imagine tablets being drawn up for purchases of chattels in the market place, and of 320 contracts of sale examined by Koschaker only 7 dealt with moveable articles.

1. *BL*, I, 85.
 2. *RSGH*, 74ff.
 3. *BL*, I, 82ff.

The importance of tablets in claiming property in a legal dispute is illustrated by AL B^{ff} 6 in which claimants to property are sought by a prospective purchaser. The purchaser has a proclamation made in Assur three times inviting those who have claims against the house or land to bring their tablets for examination by the magistrates so that genuine claims can be met. The three proclamations are made during one month, at the end of which time all outstanding claims by document holders are null and void.

Hayden points out that almost all the suits at Nuzi concerning real estate are the result of an unfulfilled or broken contract.¹ In three of these cases JEN 338, 363 and 399 the production of a tablet in court was sufficient to win the case (*ki pi tuppisūma*) 'according to the tablet'. In the numerous legal disputes at Nuzi various types of tablets were produced in court, *eg.* wills, adoption deeds and transfer tablets recording the exchange of one piece of land for another as well as straightforward receipts.

As was pointed out tablets could be sufficient in themselves to win a case but this was not normally so if the opponent was able to produce witnesses. The documents themselves were witnessed and according to Schorr² witnesses not only confirm the genuineness of the document but also the actual accomplishment of the legal transaction. This is expressly stated in Schorr, *Urkunden* 95, 19-21 and further implied in the process document 261, 22-25.

At the conclusion of a trial the judges issue tablets recording their verdict and including a stipulation that the parties are not to go to law again over the same issue. Lautner has made a thorough study of these *tuppi lā ragāmim* documents as the final act in a trial.³

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1. Hayden, *Court Procedure*, 26.
 2. *Urkunden*, xxxiv
 3. Lautner, *Streitbeendigung*, 49-66.

He concluded that the judgement given by a Babylonian court was merely a proposal for settling the dispute and was not binding until the parties had completed the *tuppi lā ragāmim* and sworn to carry out the judgement. Driver argues against this that the man who won a suit and gained a *tuppi lā ragāmim* would be no better off than when he had the contract which was originally broken. It is, however, known that the judicial decisions were not only recorded and given to parties but were stored in a special registry.¹ Gadd² mentions the building called 'the great depository of tablets' at Ur in which the courts sat and in which their archives were stored. This being so, the *tuppi lā ragāmim* could not easily be forged and would therefore be easily verified and readily acceptable in any new suit. The enormity of the crime in LH#5 in which a corrupt judge changes a document is because, having altered the judges' copy, he makes a fresh claim possible despite the party being issued with a *tuppi lā ragāmim*.

(b)

The use of written contracts and agreements is mentioned very seldom in the O T but the practice was known, and operated in the case of a bill of divorce (Deut. 24:1), and the sale of land (Jer. 32:10-11). In this latter example it is stressed that Jeremiah sought out witnesses to sign the document which he sealed before the witnesses and before all present in the court of the guard. Evidently the sealed document was accompanied by an unsealed copy so that the terms of the agreement could be read without disturbing the sealed copy. This sealed copy would only have been disturbed in the event of court proceedings.

There is no record of any conditions under which chattels need a bill of sale but this is an argument from silence since no specific legislation exists regulating the sale of chattels or real estate in terms of documents,

1. *BL, I, 78*

2. C.J. Gadd, *The History and Monuments of Ur*, (1929) 200-1.

yet in practice, as Jer. 32:10-11 shows, documents were drawn up for real estate.

(iii) Witnesses

Whereas LH#7 deals with the necessity of drawing up a contract of sale for chattels when they are offered by persons other than the owner, LH# 9-13 deals with the case in which a man discovers his stolen property in another man's possession. If the holder of the goods claims that he bought them from a third party, the *nādinānum* 'seller', then he must produce witnesses who were present at the sale, and he must also name the *nādinānum*. The owner, for his part, must produce witnesses who can identify his property, *šībī mudā* 'witnesses who know'. Both sets of witnesses take an oath before a god *maḥar ilim iqabbū* and the *nādinānum* is condemned to death as a thief. The owner takes back his property and the buyer, *šarymānum*, takes back his expenses from the estate of the *nādinānum*.

Here the proof of legitimate or unknowing unlawful purchase is by the production of witnesses alone. Since moveable goods in general are at issue and sale contracts would only be issued for these in exceptional circumstances, as eg. in LH#7, the natural mode of proof would be to produce witnesses who had witnessed the sale. In LH# 122-4, which deals with goods on deposit, the depositor is to show the goods to witnesses and then draw up a contract before depositing the goods LH# 122. In LH # 124, however, where the possibility of the receiver of the goods denying the deposit is dealt with, only witnesses are mentioned, no mention of a contract is made. This led Driver to argue that the expression which occurs in LH# 123 *balum šībī u riksātīm* implies that either a document or witnesses were acceptable as proof.¹

1. BL, I, 236-8.

Koschaker¹, however, is of the opinion that LH#122-3 implies that a deposit of goods requires a written contract and witnesses whereas in LH#124 only witnesses are demanded. In view of this situation he regards LH#122-3 as contradictory and the product of a redactor, whereas LH#124 reproduces the old law which required only witnesses. He sees the addition of 'a bond' (*riksātum*) in LH#122-3 as an attempt by the redactor to bring the section into line with contemporary practice.² Driver too regards LH#124 as inconsistent with LH#122-3 but attributes this to an error in drafting.³

Driver's contention that the expression *balum sibi u riksātum* is to be viewed as representing alternatives, with the preposition *u* regarded as disjunctive, is difficult to support and quite unnecessary. The fact that a contract would be witnessed and sealed by a number of persons implies that in a lawsuit these same people could be called to testify. As was pointed out above, among the numerous lawsuits at Nuzi only a few are actually settled by the production of documents alone. In all other cases witnesses appear with or without documents. In the case of chattels few sale contracts exist and these may well have been drawn up under special circumstances they are so few, whereas in the case of real estate documents are obligatory to record the sale and are, of course, sealed by witnesses. In cases where real estate claims are settled on the basis of documentary evidence it may well be, though it is difficult to prove because of the lack of precision in terms defining documents offered in court, that a *tuppi lā ragānim* existed already with regard to the property in question as a result of a previous lawsuit.

1. Koschaker, *RSGH*, 7-25.

2. *ibid.*

3. *BL*, 1, 238.

In that case the copy stored in the court archives could be consulted and witnesses would not be required to vouch for the validity of the documents. Normally, however, the judges demanded witnesses, and as the more important factor in the testimony it is sufficient to mention them in LH#124.

The burden of proof could rest on both parties (cf. LH#9-13) but more often it fell upon the plaintiff.¹ The defendant in theft cases at Nuzi, in keeping with LH#9-13, had also to produce witnesses. In HSS IX 12 Paya was charged with stealing wood from Šilwatesub. Paya claimed that a third party had given him the wood and was able to produce three witnesses to verify his claim. This text illustrates the procedure of LH#9-13 in action. LH#13 lays down that the parties who claim to be able to produce witnesses are allowed six months in which to produce them, otherwise they lose the case. This principle was also operating in the Babylonian courts as is shown by eg.: *tuppum annium ... kunuk abiya milik sa pa'e* ITI.6.KAM *laš'eakkum summa la ušte- akkum
 hubullī* 'this tablet was sealed by my father, I will let you have, before the sixth month, the deposition of the witnesses, if I do not produce it, it is my debt.

TUM. 1 22b:12

The principle concerning the production of a third party as the seller of disputed goods is referred to also at Alalah:

('if he says I have bought it,)

summa tankaramma ušellāsu zaku

if he can produce the merchant he is innocent'.

AT 2:35.

1. Hayden, *Court Procedure*, 29.

It should be noted that there are cases where the phrase

tuppam ula sibi occurs eg:

šumma tuppam harmam ula sibi ana PN PN2 la ūstēli
isaqqal šumma tuppam ula sibi ūstēli kaspam PN2 šabbu.

'If PN2 does not produce a case tablet or witnesses for PN, he will pay, but if he produces the tablet or witnesses PN2 has been discharged from his debt of silver ' BIN 4 147:15 and 19.

In this case the conjunction *ula* is definitely disjunctive (or) but this does not contradict the suggestion that witnesses are required with or without tablets in all but a few cases. The 'or' in the expression *tuppam ula sibi* is simply meant to imply that tablets or witnesses or both should be supplied depending on the type of case and the availability of tablets.

One problem connected with witnesses to contracts is whether or not they were all required to attend the court to verify the authenticity of a document or how many of the signators were required for this. Hayden points out a most interesting case at Nuzi in which a field which was given to Tehiptilla when he was adopted by four sons of Samahul became the issue in a suit in which Arikaya the son of Samahul went to court with Annamati the substitute of Tehiptilla. JEN 97 is the original *tuppi māruti* 'tablet of adoption' and JEN 376 the record of the trial. Ennamati was required to produce witnesses as well as the tablet but the striking thing is that none of these witnesses were mentioned on the original tablet of adoption. What interest in the case or relationship with the parties these new witnesses had is not clear, and it must be asked how they, not having been present at the original transaction, could testify to the genuineness of the transaction and the tablet.

It is nowhere explained why the original witnesses to the adoption tablet did not come forward but they could, of course, have been dead or unable to be found. It would be no valid argument to suggest that they were indisposed, for witnesses were, under such conditions, able to send sworn depositions, *cf.* JEN 321 and 135. Still the question of the appearance of witnesses not signators to the original document is left unexplained.

Where claims against property were made some time after the original sale or transfer transaction with its tablet and witnesses the death or disappearance of the witnesses must often have been a distinct possibility. Unless the property had previously been the subject of a suit and there now existed a court decision recorded on a tablet of *tuppi la ragāmim* which was deposited with the judges, they would require witnesses to corroborate the validity of the tablet and the transaction. In this event, allowing for the fact that the owner of the property would have been in possession of it for some time, the possibility is that *šībī mūdē*¹ 'knowledgable witnesses' could be called, *ie.* persons who could vouch for the fact that the property in dispute had belonged to the owner for some time. These are the witnesses who are called upon in LH¹⁹ by the owner of disputed property to identify it as his.¹ These *šībī mūdē*² appear frequently in suits at Nuzi and mostly in cases of real estate.² JEN 654 is an account of a trial in which a certain Zimi had occupied some fields belonging to Ennamati.

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1. In no case at Nuzi do both parties provide witnesses. Hayden, *op. cit.*, 201.
 2. JEN 321, 336, 344, 355, 654, 662. JEN 672 is a case of the alleged theft of a sheep. One of the parties alleged that the sheep was born in his house and the judges requested *šībī mūdē* and allotted a fixed time for him to produce them. He failed to produce the witnesses in the given time and lost the case. This is the procedure laid down in LH¹⁹-13 in action at Nuzi and the function of the *šībī mūdē* is exactly the same.

Zimi claimed that the fields belonged to his father and the judges requested *awīlū^{mēs} mu-de₄-šū ša eqlāti^{mēs}* 'his knowers of the fields' from Ennamati. Four men came forward to speak to the judges and their names are given. They state *eqlātu^{mēs} an-nu-ú ša m^vše-qa-rù mār Ha^v-ša^v[am-pa]ni-nu-ú ni-de₄-šū-ú-mi* 'we know these fields which belong to Šekaru son of Hasampa.' The judges then request witnesses (*šībū*) and a tablet from Zimi but when he is unable to produce either he loses the case and the fields. The fields originally came into Ennamati's possession after his father Teḫiptilla received them from Šekaru when he was adopted by him. The *tuppi mārūti* for this transaction is preserved as JEN 30 which has over seven witnesses' seals though some are broken. None of these witnesses are the same as those who act as the *šībī mūdē* in the trial. Zimi had been unlawfully in possession of the field for four years and Teḫiptilla would probably have held it for some time before that so that the time between the transaction and the suit was considerable. The *tuppi mārūti* still existed but was not sufficient alone to win the case and indeed is not mentioned. The *šībī mūdē* are called instead and confirm that they know the land to belong to Ennamati.¹

In the light of this process the procedure adopted by the king of Israel, II Kings 8:1-6, in restoring land to a woman of Shunem will be examined. The woman left Israel for the land of the Philistines when Elisha warned her of an impending famine. At the end of seven years she returned to Israel and appealed to the king to have her land restored.

1. PBS 1/2 9:29 is an OB text which says that the parties in a particular case should bring *šībī mūdē awātišunu* 'witnesses knowledgeable about their case'. cf. for MB BBSt. 3 IV 46 *mūdē amāti*

The mention of seven years absence is not connected with the sabbatic period of release (Ex 21:2, 23:10f) as suggested by Montgomery¹, but is designed to highlight the woman's plight. Not only has she lost her husband, or so it would appear since she appeals to the king herself, but has been absent for such a long time that her land and house have been taken over by someone else (cf. v.6). She apparently possesses no documents of ownership and brings no witnesses. In this case Gehazi acts as one of the *šībī mūdē* necessary in such a case and it may be supposed Elisha, or even the story of his raising of this woman's son from the dead, serves as the other. Just as in JEN 654 Zimi, who had occupied some fields for four years, had to give his opponent at law the yield of those four years, so the king orders, on the strength of the testimony, that the woman should have her property restored together with the usufruct of the seven years during which she was absent.

In the case of Jeremiah's purchase of his kinsman's field a contract was drawn up and the transaction carried out before witnesses. The contract was sealed and an 'open copy' made and these were placed in an earthen jar וְיִמְנָן יְמֵי רַבִּים 'that they may last many days' (Jer 32:14). Jeremiah expects that, though houses and lands will again be bought in Israel after the restoration from exile, yet, it will be a long time (ch. 29:10-14). The document is put in an earthen pot to preserve it for a long time, but clearly the witnesses to the transaction and contract will be dead if the deed of sale needs to be produced after the exile as proof of ownership. Furthermore, Jeremiah himself will be dead so that those who might benefit by the production of the deed of sale would be his relations living after the exile.

1. *Kings*, ICC, 391.

This possibly means that since Jeremiah has been shut up in Jerusalem he has had no opportunity to take possession of the land he purchased in Anathoth. He would, if the procedure outlined in the second proposition were to apply, have to be seen to be in lawful possession of the land so that 'knowledgeable witnesses' could testify to the fact. The contemporary inhabitants would, of course, also be dead after the exile was over but oral tradition regarding ownership of property in Israel must have continued during the exile.

Jeremiah's exit from Jerusalem on such an errand at this critical time can scarcely have sounded convincing to the sentry who turned him back. It illustrates, however, Jeremiah's complete conviction on two counts. Firstly he was sure the city would fall soon and time was short if he was to establish his claim to the land in Anathoth before the exile began. Secondly he was convinced that the people would return and his anxiety to establish his land claim shows that he believed the land would one day be able to be sold again.

(a) Number of Witnesses

In the case of witnesses to transactions and documents in Mesopotamia there is no specified minimum number, while in practice normally no fewer than two appear.¹ D.B. Weisberg² suggests that the number of witnesses associated with a document is determined by the importance of the document.

1. San Nicolo, *Beiträge*, 133.

2. D.B. Weisberg, *Guild structure and political allegiance in early Achaemenid Mesopotamia*, 25.

W.W. Hallo has pointed out that in the OB period some of the witnesses to contracts can be 'interested parties' while the number might be increased by having some 'idlers in the city gate' act as witnesses.¹

Abraham bought the field of Machpelah from Ephron for the price he named in the hearing of: בכס באי שער-עירו 'all those who went in at the gate of his city' Gen.23:10 and 18.

In criminal proceedings in Assyria the number of witnesses necessary to secure a conviction varied according to the class of the person accused. AL#40 indicates that the word of a single witness who is a freeman prevails against a slave girl whereas LU.MES sebūte need to be supplied to convict a prostitute: The Israelite rules governing the number of witnesses necessary in a case are clearly laid down in Deut. 19:15:

אֶחָד בְּאִישׁ בְּכֹס-עוֹן וּבְכֹס-חַטָּאת בְּכֹס-חַטָּא אֲשֶׁר יִחְטֵא
אֶחָד בְּשָׁנֵי עֵדִים אֹו עַל-פִּי שְׁלֹשָׁה-עֵדִים יִקָּוֶה דָּבָר:

'A single witness shall not prevail against a man concerning any inquiry or any crime of any sort that he might have done. By the testimony of two witnesses or three shall a charge be sustained'. The same principle is repeated in Deut. 17:6 and in Num. 35:30. The expression, 'two or three witnesses', simply means two or more, and not as M. Schultzberger² suggests, two witnesses apart from the accuser. Phillips³ follows Morgenstern⁴ in viewing Deut. 19:15 as a late interpolation in this section of Deuteronomy.

1. W.W. Hallo, 'The Slandered Bride', *Studies presented to A.L. Oppenheim*, 103-4.
2. M. Schultzberger, *The Ancient Hebrew law of homicide*, 70f.
3. A. Phillips, *op.cit.*, 23.
4. Morgenstern, *HUCA*, 7 (1930) 75 211.

Phillips argues that v.16 indicates that originally the word of one witness was sufficient but that v.15 was added to bring the section into line with later practice, and he argues, since Deuteronomy stresses this provision of two witnesses, this would indicate that it is new legislation. In fact it would be remarkable if a section as detailed in its treatment of witnesses as the present did not contain this provision.

The prohibition of a single witness does not occur in the decalogue because the detail of regulation of witnesses is not given there, only the basic prohibitions against false witness. With regard to Deut. 19:16, this verse deals with the accuser who accuses someone falsely. As shown above, p55ff, the רָשָׁע is an accuser at times as well as a witness. In LH #1 and #2 the accuser is dealt with and punished if his accusation is false and unable to be proven. As in Deut. 19:15ff, LH #1 and #2 provide a punishment commensurate with that which would have befallen the accused had the case been proven. The accuser is described in Deut. 19:17 as having a רִיב with the accused so that both of them stand before the judges of the special tribunal who investigate difficult cases. If no supporting evidence is found then the accuser is condemned. This would clearly be a case in which the tribunal could issue a call for witnesses to come forward with the threat of a curse if they failed to do so (Lev. 5:1), or administer an oath or an ordeal. Two witnesses appear in the case of Naboth, see p.72 above, after a special selection procedure to determine the culprit, and this reflects the existing concern for two witnesses to corroborate the charge.

Heaven and Earth form a pair of witnesses called upon in the 'covenant lawsuit'. On their function see the section below on, 'the lawsuit of God', p.148ff.

(b) Witnesses in criminal cases.

Witnesses who came forward in criminal cases might be called upon by the judges of a Babylonian court to prove their statements.

Thus LH #3 and #4 deal with the case of a witness who comes forward in a capital case or in a case concerned with corn or money.

šum-ma a-wi-lum i-na di-nim a-na šī-bu-ut ša-ar-ra-tim ú-ši-a-am-ma
a-wa-at iq-bu-ú la uk-ti-in šum-ma di-nu-um šu-ú di-in na-pí-is-tim
a-wi-lum šu-ú id-da-ak

'If a man came forward in a case to be a witness of a crime and has not proved his statement, if the case is a capital one he will be put to death' LH #3

LH # 4 prescribes for a case involving corn or silver that the witness will bear the penalty the suit would normally have involved if the accused had been convicted.

These conditions for witnesses were clearly designed to deter the giving of false evidence but this was balanced by incentives for accusation which was well founded and, in the Assyrian laws, with a curse issued against recalcitrant witnesses¹ (AL p.118 cf. Lev.5:1). AL#47 distinguishes between the *āmerānu* 'eyewitness' and the *šāmeānu* 'earwitness'. Driver proposes dividing AL #47 into two distinct types of procedure the first involving an eyewitness and an earwitness and the second outlining the method of persuading a reluctant witness to testify. Driver's analysis of the text is very complicated and most unlikely. He maintains that the man designated *šāmeānu* 'earwitness' has seen the offence of sorcery committed as well as the *āmerānu*.

1. AL, 120 ff, 340.

The $\check{s}\bar{a}m\bar{e}\bar{a}n\bar{u}$ first saw the offence and then, since the law demands two witnesses, told the $\bar{a}m\bar{e}\bar{r}\bar{a}n\bar{u}$ who sees the offence himself and is thus in a position to corroborate the $\check{s}\bar{a}m\bar{e}\bar{a}n\bar{u}$'s testimony in court. Driver argues that the $\check{s}\bar{a}m\bar{e}\bar{a}n\bar{u}$ is so called because he obtained an admission from the $\bar{a}m\bar{e}\bar{r}\bar{a}n\bar{u}$ that he had witnessed the offence.

This is somewhat unrealistic since even if the $\check{s}\bar{a}m\bar{e}\bar{a}n\bar{u}$ had first witnessed the sorcery in preparation and called upon the $\bar{a}m\bar{e}\bar{r}\bar{a}n\bar{u}$ to witness it too, an admission in private by the $\bar{a}m\bar{e}\bar{r}\bar{a}n\bar{u}$ would hardly be sufficient reason for the original 'observer' to become known as the $\check{s}\bar{a}m\bar{e}\bar{a}n\bar{u}$ 'hearer'. Much more reasonable is the explanation offered by Postgate (contra. Cardascia)¹. He suggests that the $\check{s}\bar{a}$ of line 7 must be taken as two separate $\check{s}\bar{a}$'s performing different functions: LÚ $\check{s}\bar{a}$ -a $ki\check{s}$ -pi e-pa-a- $\check{s}\bar{a}$ (8) e-mu-ru-ú-ni i-na pi-i (9) a-me-ra-a-ni $\check{s}\bar{a}$ -a $ki\check{s}$ -pi (10) $i\check{s}$ -me-ú-ni-ma a-na-ku a-ta-mar (11) iq-bi- $\check{a}s$ - $\check{s}u$ -un-ni (12) $\check{s}\bar{a}$ -me-a-nu i-il-la-ka (13) a-na LUGAL i-qa-ab-bi

'a man who heard from the mouth of one who had seen sorceries that he has seen sorceries done and to whom he (the see-er) had said 'I myself saw it myself' - the one who heard (this) shall go to the king and say so'. Postgate explains this construction as "leaving a slight anacolouthon and with one $\check{s}\bar{a}$ introducing a relative clause (after $\check{s}\bar{a}m\bar{a}'u$) which is attested for OA already (von Soden *An.Or* 33 # 177d); and all other problems vanish"² This seems the most reasonable explanation of the text as it stands.

1. *BSOAS* 34 (1971) 388.

2. *ibid.*

The situation is then that if a man saw a crime committed and spoke in private of it to another man (the *śāmeānu*) and refuses to admit this in public then the hearer of the admission must bring this admission into public himself. One problem that remains, namely that of providing two witnesses for a conviction. The *śāmeānu* can hardly be counted as an independent witness since the *āmerānu* could have made any number of such witnesses at any time simply by telling them that he had seen the crime. The *śāmeānu* has his testimony accepted, as to what he had been told by the *āmerānu*, by his own testimony and by taking an oath before the 'Divine Bull'. Since this procedure existed for him some similar procedure probably existed if the *āmerānu* could not produce any other eyewitnesses.

This applies also in the case of Hebrew procedure. The text already mentioned in Deut. 19:15ff specifies that two witnesses are necessary for conviction but this implies witnesses without any other means of proof. Where only one witness was available his testimony could possibly be supported by an oath or an ordeal. An example of the latter practice is the case of the 'bitter water' Num. 5:11-31. The Heb עֵדוּת 'earwitness' Judg. 11:10 and Prov. 21:28 implies more than hearsay. In the first case Yahweh is present to hear the words of the agreement itself between Jephthah and the elders of Gilead and is described as עֵדוּת between them; and in Prov. 21:28 עֵדוּת is parallel to טע .

Falk¹ suggests that the rules of evidence in Israel were so rigid as to give the judge no discretion in assessing the evidence; evidence given by two witnesses was conclusive. Considering the awareness of false witness evidenced in the O T this is hardly correct.

1. *Hebrew Law in Biblical Times*, 70.

The judges in the Babylonian and Assyrian courts frequently sent a group of witnesses to take an oath to confirm their testimony¹.

Similar procedures can be assumed to have operated in Israel and the ordeal, as stated already, was known to exist there. The terms for

false witnesses occur in the decalogue itself, they are of such importance. Stamm and Andrew² have examined the expressions $\text{רָשָׁעַ \text{ וְ} \text{אֲשֶׁר} \text{ יִשְׁבַּע}$

and $\text{אֲשֶׁר} \text{ יִשְׁבַּע}$ and consider the latter as it occurs in Deut. 5:17 as opposed to $\text{רָשָׁע} \text{ וְ} \text{אֲשֶׁר} \text{ יִשְׁבַּע}$ in Ex. 20:13, as the original form of the

commandment. They argue that $\text{אֲשֶׁר} \text{ יִשְׁבַּע}$ implies that the witness must not give any form of misleading information, *ie.*

'the whole truth and nothing but the truth' where as $\text{רָשָׁע} \text{ וְ} \text{אֲשֶׁר} \text{ יִשְׁבַּע}$ implies deliberate lies. This is a fine distinction, however, and no conclusion can safely be drawn from the terms which are so nearly synonymous.

$\text{עֵד} \text{ הַ} \text{רָשָׁע}$ occurs in Deut. 19:16 to describe a false witness or accuser and also at Prov. 21:28. As shown on p. 91 $\text{הַ} \text{רָשָׁע}$

usually implies violence against the person rather than property and the use of $\text{עֵד} \text{ הַ} \text{רָשָׁע}$ in Deut. 19:16 tends to bear this out since

it is stated: $\text{לֹאֲחִיו} \text{ לַעֲשׂוֹת} \text{ לְעֵשֶׂת} \text{ כְּאֲשֶׁר} \text{ יִצְטַח} \text{ וְעָשׂוּ־לּוֹ} \text{ כְּאֲשֶׁר} \text{ יִצְטַח}$ 'they shall do to him as he had planned to do to his brother'.

The verb עָנָה , as well as being used to depict accusation, Deut. 19:16, Mich 6:1-8, is also used of witnesses answering in court, *eg.* in the ninth commandment Ex. 20:16, Deut. 5:20, and Num. 35:30.

Testimony which led to the death sentence was regarded as of such importance and responsibility that in both Assyria and Israel the witnesses responsible for the verdict had to carry out the sentence themselves. Deut. 13:9, *cf.* AL. p.41.

1. For numerous examples at Nuzi see Hayden, *op.cit.*, 34 ff.
2. J.J. Stamm and M.E. Andrew, *The Ten Commandments in Recent Research*, 107f.

D. Judges' Examination

Following the presentation of the evidence in a case the judges were responsible for determining the validity of the arguments presented. They examined the parties, the tangible evidence, the documents, and the witnesses. On the basis of this examination they could, if not fully satisfied with the evidence presented, prescribe the administration of an oath or submission of one or both parties to a particular ordeal. As a result of their examination, the outcome of the ordeal, or the refusal of one party to submit to the ordeal or to take the oath, the judges proceeded to give their verdict.

(i) Examination of the Evidence

From the OB period onwards a variety of Akkadian terms are found to describe aspects of the judges' investigation of a case. How formalised individual expressions had become in the OB period or how accurately they reflect the actual process of investigation is often difficult to determine.

The phrase *warkatam parāsum* occurs in LH #18:64-5, 142:63-4, 168:16-17, 172:20-1 and 177:35-8 to describe the judicial activity of determining the background of a case.¹ The expression does not, however, occur in contemporary legal documents and Driver rightly concluded that the term is not a legal technical one.²

The sequence of events involved when the judge performs his judicial function is outlined in the Nimrod Epic as Gilgamesh, judge of the Nether World, is described in action:

tasāl tahāti tadāni tabarri u tuštēsir

'You (Gilgamesh) interrogate, investigate, give a judgement, *consider* it and bring about justice'. Haupt, *Nimrodepos* 53:7

1. cf. Walther, *Gerichtswesen*, 221ff.

2. *BL*, I, 74; cf. Lautner, *Streitbeendigung*, 24.

Here ^v*šalum* is used of the first phase of the investigation, *ie.* the questioning of the parties and their witnesses.¹ In the present text this is followed by *hātum* 'investigate'. This latter verb is, when used in a legal context, confined to the activity of divine beings,² and would be replaced by the verb *amārum* when human beings are the subject. The fact that the verb *dānum* follows *hātum* in the text under consideration suggests that *hātum*, or, in the case of human agents *amārum*, is a term describing the examination of or 'looking into' the evidence presented, on the basis of which he forms his judgement (*dānum*). Section C has already shown what types of evidence could be presented for examination. The verb *amārum* is easily the most frequently used verb to describe the judges' examination of the evidence and is frequently used with the term *dīnam* as object, or in some cases with *awātim*:

da-a-nu a-wa-ti-šū-nu i-im-ma-ru-ma

'the judges shall examine their statements' LH #9:27

dayānū awātīšunu imurūma PN NU.GIG aššum kunukkiša ubaqqiru
arnan imidūši

'After the judges investigated the case they imposed a penalty on PN the *qadištu* woman, because she instituted a (false) claim regarding her sealed document'. TCL 1 157:50.

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1. This verb occurs in this technical legal sense only a few times in extant texts *cf.* *MR.S.* 9 p.64 (*RS* 17, 237:11) *dīnam šalum*; *warkatam šalum* occurs in *BIN* 7 31:19-20.
 2. *cf.* *CAD* 6, 160.

A further term meaning 'to investigate' is *bu'u* which, however, occurs when in a legal context, when the judge is situated in a temple and therefore may suggest that an oath is implied in the examination¹:

*aššum zitti šarrim ša bīt PN PN2 ... pānānum ina bīt d^k NIN.MAR^k
mārī PN uba'ima*

'PN2 had previously examined the sons of PN in the temple of DN with regard to the "kings share" of the estate of PN' *JRAS* 1926 437a:6.

Among the Israelites the judges examination of all the forms of evidence formed an important aspect of the judicial procedure.

וְדַרְשׁוּ הַשִּׁפְטִים הַיָּטִב וְהַנָּה עַד שֶׁקֶר הַעֵד שֶׁקֶר עִנָּה בְּאֵחָיו :

'Then the judges shall carefully investigate, and if the witness is a false witness and has falsely testified against his brother (they shall do to him as he purposed to do to his brother)' Deut. 19:18.

Here the term דָּרַשׁ corresponds to the Akkadian *amārum*, and in the particular case of Deut. 19:18 refers to the careful examination of the testimony of the statutory two witnesses. דָּרַשׁ is used again in two cases dealing with the investigation of worship of foreign gods in Israel. In Deut. 13:15 the text deals with the case of a city given over to the worship of a foreign god:-

וְדַרְשׁוּ וְחַקְרוּ וְשָׁאַלְתָּ הַיָּטִב וְהַנָּה אִם אֱמֹן נִכּוֹן הָעִיר :

'Then you shall investigate and search and question diligently, and if the report is certainly true....'

In Deut. 17:4 a similar procedure is ordered in the case of an individual apostate,

וְדַרְשׁוּ הַיָּטִב וְהַנָּה אִם אֱמֹן נִכּוֹן הַדָּבָר :

'Then you shall carefully investigate, and if the report is certainly true...'

1. cf. *CAD* 2, 363.

קָרַר, שָׁאָר, and שָׁרַר must represent distinct aspects of the investigative procedure since the text in question is a legal document in which the terms invariably have an exact significance. The procedure represented by שָׁאָר and קָרַר is nowhere described in the O T but שָׁאָר is evidently the process of questioning the parties and the witnesses and is exactly equivalent to the Akkadian *šālum*.

קָרַר is not defined but it may possibly be equivalent to the Akkadian *parāsum*, to determine the facts, or background situation of the case, and such a meaning would fit the context well. קָרַר is no mere synonym for שָׁרַר, and in fact בִּקְשׁ is chosen as the synonym for the forensic שָׁרַר in Job. 10:6-7:

כִּי תִבְקֹשׁ צַעֲוֹנַי וּבְחַטָּאתַי תִּדְרֹשׁ :
 עַל דַּעֲתֶךָ כִּי צָא אֶרְשַׁע וְאִין אֶצִּדֶּךָ מַעֲצֵב :

'You search out my iniquity and investigate my sin although you know that I am not guilty, and there is no one to deliver from your power'.

Where the judges' examination of all the facts and evidence available led them to no conclusive decision they had available the procedures of oath and ordeal.

(ii) The Ordeal and the Oath.

The use of the oath and ordeal in Mesopotamian court procedure is well attested from OA and OB times until the end of cuneiform records. The situation in Israel is not so clear since, despite the fact that oath taking was so common in Israelite society,¹ there are few references to oath taking in court procedure and only one to a judicial ordeal (Num. 5:16ff).

Where no evidence is produced in a case recourse may be had to an oath or an ordeal. In the case of suspicion of adultery the Assyrian Laws lay down that the accused woman must submit to an ordeal by river (AL # A17). In the case of an Israelite woman whose husband becomes jealous and suspicious he may bring her to a priest for the administration of the ordeal of 'bitter water' (Num. 5:19). It is striking that this procedure is both an oath on the part of the woman in the face of dire curses, and an ordeal in that she is obliged to hold a cereal offering as a remembrance of iniquity (v.15 & v.18) and drink bitter water into which the priest has washed curses from off a scroll. The curses are both recited by the priest, after which the woman adds "Amen, Amen" (v.22), and written by him on a scroll before being washed off into the water. The guilt or innocence of the accused woman is determined by whether or not the curses are put into effect by Yahweh (vv. 27-8).

At Nuzi two types of ordeal operated, the *nīs ilāni* 'oath of the gods' and the *hursan*^{v-} ordeal² which corresponded to the Babylonian river ordeal.

1. M.H. Pope, *IDB*, 'Oaths', p.576.

2. Hayden, *Court Procedure*, 34.

The former, like the ordeal of the 'bitter water' (דִּי־מַי־רָע) was both an oath taking procedure and an ordeal. It could be administered even when one party had produced witnesses and the other had not, indeed the witnesses themselves might be ordered to take the *nīs ilāni* to determine the veracity of their testimony. It is not clear where the *nīs ilāni* was administered but it was not taken in the court¹ and was most likely administered in the temple while the *manzaduḥlu* looked on to determine the outcome. The Nuzi documents contain no description of the procedure of the *nīs ilāni* nor an explanation of how, after the ordeal, the parties or witnesses statement was able to be verified or rejected. This may be accounted for by the fact that the court records now extant are merely abstracts of the cases and since the ordeal of the *nīs ilāni* would have been well understood by the contemporaries its operation is left unexplained.

When the judges prescribed the *nīs ilāni* the person concerned could refuse to submit to this ordeal (*lā magāru*)² in which event he would lose the case, but frequently the person would go to the Gods and then 'turn (*tāru*) from the gods', and again lose the case. The fact that, in numerous cases³, people went to take the oath of ordeal but turned from it at the last minute suggests a fear of the consequences of taking the *nīs ilāni* and swearing falsely.

1. *ibid.*

2. JEN 352, 353, 366; HSS XIV 592.

3. HSS V.43, 52; IX 141, XIV 592; JEN 324, 326, 331, 332, 347, *etc.*

As Hayden says, "The oath was, in effect, a solemn appeal to the gods to witness the truth of the statement, coupled with an imprecation of divine judgement in the event of falsehood"¹

There are two cases, however, in which a party to a suit took the *nīs ilāni* and still lost the case.² This implies that in some way the *manzaduhlu*, who was responsible for reporting the outcome of the *nīs ilāni* to the court, was able to observe that the gods before whom the oath was taken had either rejected it as invalid or accepted it. It is possible that some element in the litigants' behaviour may have been the determining factor, but this aspect is not clear. If this procedure is compared with the Hebrew administration of the 'bitter waters', then in the latter case the fact that the curses pronounced and contained in the water caused physical effects in the victim (possibly as a psychological reaction from fear of the curses in a guilty party) may suggest that some physical reaction may have been looked for at Nuzi as well.

The *huršān* ordeal is not defined at Nuzi but it was administered when no witnesses were present on either side. The procedure involves the sacred river,³ as in LH #2, to determine the guilt or innocence of a party. The same procedure is adopted in LA #A17 and significantly, no witnesses are involved in that case either. (cf. LH #132). The process of ordeal by the sacred river as indicated by LH and a contemporary letter from Yatar-ami of Carchemish to Zimrilim of Mari is simple.

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- 1. Hayden, *op.cit.*, 35.
 - 2. HSS v.47, & JEN 347.
 - 3. Hayden, *op.cit.*, 39.

The party ordered to submit to the ordeal jumps into the river. If he floats he is innocent and if he sinks and is drowned he is guilty. Driver points out that the same procedure was in operation in a document contemporary with the MA laws and so section A #17 will reflect the same principle.¹ At Nuzi, however, persons found guilty as a result of the *huršān* ordeal are still alive to receive sentence so that the operation of the river ordeal must differ somewhat from that in Babylon. Driver had suggested earlier that the Assyrian and Babylonian practice followed the general Semitic principle with regard to the ordeal by water, namely, that to float indicated guilt and to sink indicated innocence,² but as seen, he later changed his views. His later conclusions regarding Babylonian practice are no doubt correct but the Assyrian principle is not explicit in the texts. At Nuzi, since the guilty party did not drown, either Driver's earlier suggestion that the guilty party floated and the innocent sank and had to be rescued applies there, and perhaps also in the almost contemporary Assyrian laws, or the guilty party must have been drawn out from the river before he drowned. When the guilty party was isolated at Nuzi the penalty was not always death. In PS (AASOR 16) 74 & 75 the loser was killed, in HSS IX 7 & XIII 422 the king decided his fate, and in G(add) 29 he forfeited his property.

Both parties to a dispute might be sent to the water ordeal together at Nuzi and if one turned back he automatically lost the case and received sentence as if the ordeal had proven him guilty.³

1. *BL*, I, 65.

2. *AL*, 94

3. Hayden, *op.cit.*, 49.

E. The Verdict

Having examined the evidence presented and, where applicable, subjected those concerned to the ordeal or the oath the judges were in a position to pass sentence on the criminal or make awards as justice demanded. Both the OT and LH make careful provision to warn against partiality or the acceptance of bribes by the judges (LH #5, Deut 1:17, 16:19).

Throughout the period of Akkadian records the verb *dānum* is used of parties entering into litigation and also of the judges conducting a trial and reaching a decision. The verb is used as a comprehensive term for the judge's activity and is not restricted to any particular aspect of the conduct of the trial. To return to the quotation from the Nimrod Epic in which Gilgamesh is said to 'question and investigate' (*šālu, hātū*) a case, the text continues, *tadāni tabarri u tušteššir* 'you judge the case, consider it and see justice done'. Here *dānum* is used to sum up the action of the judge in investigating the case and hearing all the evidence, significantly *dānum* is followed by the verb *barūm* 'to inspect, consider'. This may mean that the careful judge, having heard the evidence, will, where doubt exists, order oath or ordeal to confirm his opinion and in this way *tušteššir* 'you shall see justice done'.

LH uses the expressions *dīnam dānum* and *purussām parāsum* of the judge who has made a decision and then alters it (*enūm*). Lautner¹ argues that these expressions represent consecutive steps in an action, *ie.* the judge grants a trial (*dīnam dānum*) and decides the issues involved (*purussām parāsum*) and then has a tablet drawn up which is a promise by both parties not to renew litigation on this particular issue (*tuppi lā ragānim*).

1. Lautner, *Streitbeendigung*, 25ff.

Driver¹ argues against this that *d̄inum* would in this case have to mean 'trial' in line 7 while in lines 13 & 17 it must mean decision since it is the *d̄inum* which is altered. Driver suggests that the second and third clauses explain the first, *ie.* in line 7 the judge has 'given a decision' (*d̄inam d̄anum*) in the sense that he has 'decided the issues' (*purussam parāsum*) and has caused a record of the decision to be stored in the archives (*kunukkam ušēzib*).

This analysis is substantially accurate, for the phrases describe a single transaction, namely that a judgement had been given and a record made of this decision. It is not necessary, however, to question the use of *d̄inum* in line 7 as 'case, trial', and in lines 13 and 15 as 'decision, judgement'. *d̄inam d̄anum* means more than 'give a decision', it implies all the phases of the trial up to and including the decision.

Judgements given in contemporary OB documents are not explained so that it must have been difficult for later judges to use these cases as precedents. The logic upon which the decision rests is absent and even if, as Driver suggests, the reason for a decision was given orally to the parties² (and this must remain pure conjecture), it would not help future judges to form their judgements. In cases where the oath or ordeal was ordered the outcome of this often automatically determined the judge's decision.

Appeal against sentence was possible, as will be shown, but at Nuzi where cases of appeal were tried by the lower courts there is no case of such an appeal being successful.³ An unsuccessful appeal brought a fine of one slave girl as well as one ox each to the judges in the original case.

1. *BL, I, 70f.*

2. *BL, I, 71 n.3.*

3. Hayden, *op.cit.*, 56 & 61.

The expression *dīnam šūhuzum* has been mentioned already in the section 'Agreement to litigate' (p. 97) where one interpretation of the phrase was rejected. Von Soden¹ translates *dīnam šūhuzum* by 'Prozessverfahren gewahren', while CAD's² 'conduct a trial', is no more precise. The view of Landsberger³ and, following him, Yaron⁴ that the phrase is to be understood as indicating the parties' willingness to submit to the powers of the court to render a binding decision was discussed on p. 98. As was pointed out there, this interpretation is not valid.

The translation offered by CAD agrees with that earlier made by Goetze, 'conduct a trial, try',⁵ but it is vague and says nothing of the relation of the parties to *dīnam šūhuzum* or of the relation of this phrase to other expressions used in the lawsuit. S.D. Simmons too sees *dīnam šūhuzum* as referring to the conduct of a trial but he is more precise than Goetze and CAD and renders the expression as 'initiate proceedings against'.

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1. *Ahw* 19b.
 2. CAD 1¹ 178a.
 3. *Symbolae Koschaker*, 228.
 4. *The Laws of Eshunna*, 81.
 5. Goetze, *The Laws of Eshunna* AASOR 31 (1956) 119.

He regards the judges as the subject of the verb so, placing the responsibility for prosecuting the accused on them; thus

(6) DI.KU₅MES^v *di-nam u'-ša-hi-zu-šu-u-ma* (7) 1/3 MA.NA 4 GÍN KÙ.

BABBAR *i-mi-du-šu-u-ma* NBC 8237, a text concerning a theft and subsequent trial, Simmons translates, 'The judges initiated legal proceedings against him and fined him 1/3 mina 4 shekels of silver'.¹ He again translates *di-nam u'-ša-hi-zu-šu-ma* as '(the elders and the foremen of the 'fishermen' and captains) initiated legal proceedings against them (and awarded)' NBC. 5304, 13.²

Like Simmons, Lautner and Schorr both place the action of *dīnam šūhuzum* at the beginning of the trial and regard the judges as the subject. According to Lautner³ the phrase expresses the courts willingness to hear the case. Schorr holds the same view and explains the interpretation by assuming that, after the parties have come before the court the judges examined the validity of their complaint to see whether or not the accusations formed the basis for a trial. If the claim appeared to contain an element of credibility the judges 'caused them to have a trial', *i.e.* 'granted them a hearing'.⁴

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1. S.D. Simmons, 'Early Old Babylonian Texts', *JCS* 14 (1960) 28.
 2. S.D. Simmons, 'Early Old Babylonian Tablets from Harmal and Elsewhere', *JCS* 15 (1961) 81.
 3. Lautner, *Streitbeendigung*, 27.
 4. Schorr, *Urkunden*, 347.

Lautner, to support this view, cites two letters which, as Driver has already pointed out, in fact disprove it.¹ In both letters Hammurapi writes to Sin-iddinam, governor of Larsa, asking him to determine the facts in a case, *warkātam purusma* and give a judgement according to the *šimdatum*, *kīma šimdatim dīnam šūhissunūti*.² These texts by themselves could conceivably be construed to mean that the *warkātam purusma*³ referred to the facts laid before the judges which they had to examine before allowing a trial. In that case Driver's protest that a judge grants a hearing before, not after the facts is no longer applicable. Driver's argument concerning the use of *dīnam šūhuzum* as inapplicable to a mere hearing is stronger. In fact the expression *dīnam šūhuzum* occurs regularly in legal documents (though never in the 'codes' of laws) and the use of the term follows a set pattern. The parties in the case make their claim and the judges then *dīnam šūhuzum* 'render a judgement'. Following this judgement one of two things happens, either, (1) a fine or punishment is imposed⁴ or, (2) the parties are sent to take an oath to substantiate their statements.⁵

1. Driver-Miles, *BL, I*, 70.

2. Ungnad *B.B.* 4 and 8.

3. But *cf.* *UET* 5 263 '(the king) considered the case'
(*warkātam iprusma*)

4. Schorr, *Urkunden*, 251:26 f; 263:12 ff. (shaving hair);
264:6 f (shaving), 266:20 ff.

5. *ibid.* 304:7 ff.; 260:3 ff.

Since the imposition of a fine or punishment follows immediately on the phrase *dīnam šūhuzum* it is reasonable to see in this expression a decision arrived at by the court. Where the oath is ordered and taken no further proceedings are recorded, suggesting that a decision had already been reached that if the oath were taken then the matter should rest there. Furthermore, the occurrence of *dīnam šūhuzum* after the verb *amārum* 'to examine', which is a term used of examining witnesses and facts presented during a case¹ indicates that *dīnam šūhuzum* refers to the decision of the court after examining the case, eg.: *awat PN amrāma dīnam šūhizānim*. TCL 18 130:6. 'investigate PN's case and give a decision.'

It will be argued here that the meaning, 'deliver a judgement', adopted by Driver-Miles² is correct and the more recent translations in *CAD* are mistaken.

Yaron, as already noticed, argued that *šūhuzum* is a causative form with the judges as the formal subject but that it is the litigants who are caused to proclaim their readiness to abide by the decision of the court. In fact *šūhuzum* means 'to instruct, teach, cause to grasp'. The judges are responsible for instructing the parties as to the proper course of action in the case, *ie.* they 'cause them to know the law'. If this interpretation is correct then it will clarify the use of *kīma šimdatim* in the texts cited above. The judges 'make a decision known' on the basis of an already existing regulation.

1. see above pp. 129 f.

2. *cf.* *CAD* 1¹, 180.

In an article dealing with *šimdatum*¹ M. de J. Ellis points out the relationship between *šimdatum* and *dīnam šūhuzum* as expressed in *ana ittisu*^v. Here the two terms are listed as equivalents of DI. DAB₅. BA.

ana ittisu^v VII : 26ff.²

DI.DAB₅. BA = MIN (di-i-nu) šu-hu-zu

DI.DAB₅.BA = si-in-da-tu (var. si-mi-i (t-t)u) .

Ellis argues that a strict distinction must be maintained between the logogram DI.DAB₅.BA and *šimdatum*. She maintains that all the OB occurrences of the term DI.DAB₅.BA known at present are to be taken as the logogram for the Akkadian term *dīnum*.³ Landsberger had already tackled the problem of DI.DAB₅.BA = *dīnam šūhuzum* and *šimdatum*, and concluded that the Sumerians were not able to translate the term *šimdatum* directly and so choose DI.DAB₅.BA, a phrase from the realm of the court room, which is given in Akkadian as *dīnam šūhuzu*.⁴ Ellis did not take into consideration the further Akkadian equivalents of DI.DAB₅.BA given in LZ1 = išātu c iv 9ff. DI.DIB.BA = di-nu da-a-nu, di-nu pa-ra-su, di-nu šūhuzu.

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1. M. de J. Ellis, '*šimdatum* in the Old Babylonian sources', *JCS* 24 (1972) 74 and 77.
 2. *MSL*, I, pp. 32-3.
 3. Ellis, *loc.cit.*, 82.
 4. Landsberger, *Symbolae Koschaker.*, 228.
 5. Read DI.DIB.BA Falkenstein, *NSG*, 9 for *ana ittisu* passage already cited.

Here the equivalence of *dīna parāsu*¹ and *dīna dānu*² with *dīna šūhuzu* shows that the last expression has the sense of 'render a verdict', as was suggested above and advocated by Driver-Miles and Bottero.³

As was pointed out above the parties were able to refuse to abide by the decision of the court, but in no case is it explicitly stated on what basis they were enabled to do so. Such a situation is somewhat strange in view of the fact that the judges were empowered to enforce their decisions.⁴ On what basis were the parties able to reject the judgement of the court?

In this connection LE[#]58 is of interest. This section deals with negligent homicide through the collapse of a wall known to be unsafe. The text reads *na-pi-is-tum si-im-da-at sar-ri-im* which Goetze translates 'then life (is in jeopardy) (and the offence falls under) the jurisdiction of the king'.⁵ He concluded, on the basis of this passage, that *kīma šimdat šarrim* "refers to royal prerogatives which exist outside the area covered by the 'Laws' and enables the king to impose sanctions reserved for him alone."⁶

1.2. For *dīna parāsu/dānu* in the sense of rendering a verdict

cf. Driver-Miles *op.cit.* 74.

3. J. Bottero, *Ecole pratique des hautes études*, IVe section,

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'rendre judgment à l'accusé'.

4. Driver-Miles *op.cit.*, 72, and see above on penalties imposed

following *dīnam šūhuzum*.

5. Goetze, *AASOR* 31, 133-4.

6. *ibid.*, 141 n.22.

LE#48 also refers to cases which might be tried before the subordinate courts or, if they were important enough, before the king:

42. u a-na *** is-tu 1/3 ma-na a-di 1 ma-na 43. awilam
di-nam u-sa-ha-zu-su-ma 44. a-wa-at na-pi-is-tim a-na sar-rim-ma

'And for? from 1/3 to 1 mina, they shall give a decision, but a matter concerning life is for the king.'

Goetze comments, "For such cases as carry penalties from 1/3 to 1 mina the legal procedure known as *dīnam šūhuzum*, literally 'let somebody (acc.) seize trial' is prescribed. This should mean that for lighter cases it was not considered necessary to institute such formal proceedings.

Do we have to assume that for these cases a kind of 'police court' existed?"¹ It is difficult to see how Goetze concludes that the proceedings envisaged were "less formal", but apart from this he is right in pointing out the distinction between the use of *dīnam šūhuzum* as applied to the lower courts, and the decisions of the king himself.

Lautner had already pointed out, with reference to *dīnam šūhuzum* that, "Diesen zweiseitigen Prozeßeröffnungsakt verzeichnet fast jede Urkunde, die über ein Volksgerichtliches Verfahren referiert."²

Since *dīnam šūhuzum* is used in connection with the decisions of the lower courts it is possible that refusal to abide by such decisions implied appeal to the king himself.

1. Goetze, *op.cit.*, 123.
2. Lautner, *op.cit.*, 25-6.

Just as *dīnam šūhuzum* is used exclusively of subordinate courts 'making clear' decisions so *šūpūm* is used of gods or royal personages 'making clear' their decisions:

ša sēni u zānānē tušāpi dīnšun "You (Samas) make clear the decision concerning the criminal and the lawbreaker." *BWL* 128:58.

sukkallu šīru mušāpū danqāti ša purussūšu la uttakkaru 'great vizier who decides , whose decisions cannot be altered' *Craig ABRT* 1 35:12.

Hammurapi had as his objective *mēšaram ina mātīm ana šūpūm*. "to make justice clear in the land." The verb *šūpūm* is used too of decisions made by way of revelation through oracles or whatever; *šūpi šamaš bēl dīnim Adad bēl ikribī* make clear (the answer) Šamaš lord of decision, Adad lord of benediction" *RA* 38 86:21 and in NB: *ēnu*.....

^d*Namrašīt ušāpi purussūšu kīnu ana RN* 'when Namrašīt made clear his reliable decisions for Nabonidus ' *Yos* 1 45 i 3.

It may be that this situation is reflected in the lexical equivalents in *ana ittīšu* where *DI.DAB₅.BA.* = both *šimdatu* and *dīnam šūhuzu*. The latter expression, as has been shown, expresses the judges' exposition of the legal situation and his rendering a decision whereas *šimdat* is a decision¹ arrived at by the king acting for the god and is authoratative. *DI.DAB₅.BA.*, therefore, is equated to rendering decisions but by different authorities. Persons not satisfied with the decisions of the lower courts might appeal to the king who would give a binding decision, (*dīnam šūpūm*). It is worth noticing that Hammurapi applies the verb *šūpūm* to *mēšarum*, *LH* i 34, whereas the normal expression for issuing a *mēšarum* edict is *mēšaram šakānum*².

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1. So Kraus *JCS* 3 (1957) 158. despite Ellis' objection that *UET* 5 263 has a *šimdat šarrim* reversed.
 2. cf. Kraus, *Edikt*, #1:3-4.

The situation in Israel was similar to that in Mesopotamia in that judgments made by the lower courts were limited to lesser matters, while more important or difficult cases were referred to the central tribunal at Jerusalem (Deut. 17:8-13).

The local judges are exhorted to judge justly and not conspire together to pervert the course of justice Ex. 23:1-3; 6-8, Lev. 19:15, 35;

וְשֹׁמֵד לֹא תִקַּח כִּי תִקַּח כִּי תִקַּח כִּי תִקַּח אֶבְיֹוֹן בְּרִיבוֹ :

'You shall not pervert the case of your poor when he pleads' Ex. 23:6.

וְשֹׁמֵד לֹא תִקַּח כִּי תִקַּח כִּי תִקַּח אֶבְיֹוֹן בְּרִיבוֹ :

'You shall accept no bribe, for a bribe blinds the watchful and overthrows the cause of the righteous' Ex. 23:8.

If the local judge gives a verdict and imposes a penalty of flogging, then the sentence is to be carried out in his presence (Deut. 25:2). The local judge had the power to administer such punishments, but in certain cases the issue was brought to the attention of the king. Thus, eg. Solomon had to deal with rival claimants for a child (I Kings 3:16-28) while other kings dealt with a variety of issues (II Sam. 14:4-11; II Sam. 12:6; II Kings 8:3). The process by which appeal might be made to the king or his representative in the central tribunal in later times is not clear. However, like the Mesopotamian courts, the decisions reached by the higher courts were regarded as binding :

וְעָשִׂיתָ עִלְיוֹן כְּכִי יִדְבַר אֲשֶׁר יִבְחַר יְהוָה וְגו' מִן הַמְּקוֹם הַזֶּה וְאֵל אֲשֶׁר יִבְחַר יְהוָה וְגו' :

'Then you shall do as they declare to you from that place which Yahweh will choose' Deut. 17:10.

וְשֹׁמֵד לֹא תִקַּח כִּי תִקַּח כִּי תִקַּח אֶבְיֹוֹן בְּרִיבוֹ :

'You shall not turn aside from the decision they declare to you either to the right or the left' Deut. 17:11.

There is no distinction between the terms used in Israel for the decisions of the higher and lower courts, but the presence of priests on the central tribunal shows that their decisions were regarded as divine revelation which had to be obeyed and, of course, could not be appealed against.

It was argued in Chapt. 1 that after the period of the Judges the old system involving a supreme judge to whom appeal might be made broke down, and by the time of the monarchy appeals were made to the king himself who was unable to cope with the volume of the work since he had no longer available the ancient system of deputation of responsibility. By the time of Jehoshaphat, however, the ancient system was, in some measure at least, restored and the king was represented on the central tribunal to which appeals were made.

The forensic terms for condemnation and acquittal are קצק and קרשי, used often in conjunction with other terms, not forensic, indicating perversity and rectitude, eg.

אם אצק פי לך שגוני תמ אמי ויעק שני :

'Though I am righteous my mouth would condemn me

Though I am blameless He would prove me perverse' Job 9:20.

These terms take on a wider theological significance within the OT which is developed much more in the NT and is in fact a vital part of the message of the Christian Gospel. Significantly the Gospel affirms that God's final condemnation or acquittal is without appeal.

II. The Lawsuit of God

The important studies of H. Gunkel in *Gattungsgeschichte* have pointed out the prophetic genre known as *Gerichtsrede*, 'lawsuit'.¹ Others, whose views will be considered in detail below, have expanded and clarified Gunkel's basic work.² These authors reconstruct a typical Israelite Lawsuit from the O T passages which have been examined in the first part of this chapter. The fact that their reconstructions suggest a confusion between the functions of defendant, plaintiff, judges, and witnesses, a confusion which has no parallel in other Ancient Near Eastern court procedures, is left unexplained. Köhler, *eg.* states, "Die Rechtsgenossen, welche Zeugen und Richter in Einem sind oder doch sein können ...",³ and again, "Judges and witnesses are therefore not differentiated".⁴

In contrast to this supposed state of affairs in Israel it has been shown above (Chap. 1, pp. 226) that Judges in the Mesopotamian legal system had a certain clearly defined function quite distinct from that of witnesses.

1. H. Gunkel u. J. Begrich *Einleitung in die Psalmen: Die Gattungen der religiösen Lyrik Israels*, (1933) 329.

2. *eg.* J. Begrich, "Studien zu Deuterocesja", *BWANT* 77 (1938) 19-42; L. Köhler, *Hebrew Man* (1956), E.T. 156-7; H.B. Huffmon, *JBL* 78 (1958) 291 ff; G.E. Wright, 'Israel's prophetic heritage', (1962), 42 ff.

3. *Deuterocesaja stilkritisch untersucht*, *BZAW*, 37 (1923) 110.

4. *Hebrew Man*, 156-7.

It is the purpose of this section to show how the confusion of function of parties in the Israelite lawsuit has arisen and to suggest a fresh interpretation of the lawsuit passages against their Ancient Near Eastern background.

(A) The Lawsuit Gattung

H. Wheeler Robinson maintained that the setting of the prophetic lawsuit was the heavenly assembly acting as a court of law¹, and was followed in this by G.E. Wright², and F.M. Cross Jr.³ H.B. Huffmon⁴ utilised the work of G.E. Mendenhall⁵ to introduce a distinction between those "lawsuits" in which natural elements such as heaven and earth were introduced and those containing no appeal to the natural world. He says, "The statement that the 'lawsuit' oracle type undoubtedly had its origins in the conceptions of the role of Yahweh's heavenly assembly as a court" (Cross *JNES* 12 (1953) 274n.3), is not relevant when applied to the oracles containing an appeal to the natural world."⁶

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1. H. Wheeler Robinson, "The council of Yahweh", *JTS* 45 (1944) 151 ff. and, *Inspiration and revelation in the Old Testament*, (1946), 167 ff.
 2. G.E. Wright, *The Old Testament against its environment*, (1950) 30ff. and subsequently, 'The Lawsuit of God', in *Israel's prophetic heritage*, (1962) 42 ff.
 3. F.M. Cross, "The council of Yahweh in Second Isaiah", *JNES* 12 (1953) 274-77. cf. The comments in Chap. 1 of this thesis pp.44ff.
 4. "The covenant lawsuit in the Prophets", *JBL* 78 (1958) 291.
 5. *Law and covenant in Israel and the Ancient Near East*, (1955) 34.
 6. Huffmon, *loc .cit.*, 291.

Huffman argues that there is no direct evidence for heaven and earth acting as members of the divine assembly. This he maintains is true of Mesopotamian and Anatolian god lists and of those passages in the O T which Robinson and Cross take as referring to a divine assembly.¹ He sees in the references to the natural elements in the vassal treaties of the second millennium, and indeed in the Aramean treaties of the 8th century, a parallel usage to that of the 'lawsuits' of the O T. He says, "Due to the close parallel between covenant forms in Israel and the international treaties, it is quite safe to suggest, as Mendenhall has, that the list of witnesses (not deified in Israel) is preserved in the O T in 'the appeal to the heavens and earth, mountains and hills, either as witnesses or as judges in the controversy between Yahweh and Israel when Israel is indicted for breach of covenant' (Mendenhall *op.cit.* 40)."² Huffman's arguments for a distinction between the 'covenant lawsuit' and the 'divine council lawsuit' are rejected by Wright who accepts the concept of a 'covenant lawsuit' but argues that the setting for this lawsuit is still the divine council acting as a court of law.³ On the question of the natural elements not being listed as members of the divine assembly Wright argues that while the natural elements are not listed *per se* as members of the divine assembly, yet their position in the treaties after the divine personal names suggest that they are summarizing categories into which all the gods fall.⁴

1. *ibid.*

2. Huffman, *loc.cit.* 292.

3. G.E. Wright, *Israel's prophetic heritage*, (1962) 45-49.

4. *op.cit.*, 46.

Wright points out that the appeal to heaven and earth in the prophetic 'covenant lawsuits' of Jer. 2:4-13; Isa. 1:2-20; Mich. 6:1-8, *cf.* Isa. 3:13-15 and Ps. 50, is similar to the appeal by Moses to heaven and earth in the hortatory prose of Deuteronomy at Deut. 4:26, 30:19 and 31:28.¹ He argues that, since Deuteronomy has its background in the Mosaic covenant theology and the liturgical renewal of the covenant at Shechem (Josh. 24),² in the Deuteronomic tradition the celebration of the covenant renewal embodied, at some stage, elements of the 'lawsuit'.

This controversy which has arisen from the attempt to classify the types of 'lawsuits' against their Near Eastern background is accompanied by a debate as to the function of the parties involved in the proceedings.

The Gunkel - Begrich³ analysis of the 'lawsuit' form is set out by Huffmon⁴ as follows:

- I A description of the scene of judgement .
- II The speech of the plaintiff.
 - A. Heaven and Earth are appointed as judges .
 - B. Summons to the defendant (or judges) .
 - C. Address in the second person to the defendant.
 - 1. Accusation in question form to the defendant.
 - 2. Refutation of the defendant's possible arguments .
 - 3. Specific indictment.

1. This much had already been observed by Huffmon, *loc.cit.*, 292.

2. *cf.* G. Von Rad, *Gesammelte Studien*, 33f.

3. *op.cit.*, 364-5.

4. *loc.cit.*, 285-6.

or alternatively,

- I A description of the scene of judgement.
- II A speech by the judge.
 - A. Address to the defendant.
 - 1. Reproach (based on the accusation).
 - 2. Statement (usually in third person) that the accused has no defence.
 - B. Pronouncement of guilt.
 - C. Sentence (in second or third person).

In the speech of the judge, the judge is Yahweh himself and the defendants are foreign gods (Ps. 82; Isa. 41:21-29; 44:6ff),

"whereas in the speech of the plaintiff, Yahweh is the plaintiff Israel is the defendant, and heaven and earth, according to Gunkel are the judges (Ps. 50; Isa. 1:2-3; 3:13-15; Jer. 2:4ff Mich. 6:1-8)."¹

Huffman regards heaven and earth as witnesses to the covenant between Yahweh and Israel whose precise function in the 'lawsuit' is not clear. He suggests, however, that "The formal analogy with court procedure would strongly suggest² that heaven and earth serve as judges, for Yahweh is the plaintiff and Israel the accused. Heaven and earth as judges may be a literary fiction, but it would be more appropriate if the judge could serve as executor of the sentence in actual court practice (as it suggested by Deut. 25:1-3), since the natural world served to carry out the curses and blessings."³

1. Huffman, *loc.cit.*, 286.

2. A remarkable statement in view of the fact that he later says "when more is learned of court procedure in the Ancient Near East, the path of transfer will perhaps be more clear", p. 293. *cf.* Wright, *op.cit.*, 46.

3. *loc.cit.*, 292-3.

Against this argument Wright¹ contends that if heaven and earth are judges, as Huffmon and Gunkel suggest, it is impossible to make coherent sense of the 'covenant lawsuit' passages. This type of lawsuit implies a covenant which the suzerain had granted to the vassal and which the vassal has broken. As Wright sees the 'lawsuit' it also implies a suzerain who, in the heavenly lawsuit "claims authority over all powers on earth and who is presiding over the highest tribunal in the universe."² He points out that it is difficult, in such a situation, to see why the suzerain should call in a third party to act as judge and jury in a case in which his agreement with a vassal has been broken and his covenant stipulations violated. This is especially so since any judge must necessarily be a subsidiary being in the suzerain's domain.³ Wright goes on to argue that the suzerain is the judge, plaintiff, and jury in the case since he is the one whose covenant has been violated but he is also the supreme authority wielding power in both accusing and sentencing. "The heavenly assembly is in this case only witness and council (*cf.* I Kings 22:20-22), nothing more. Consequently neither the example of the 'primitive democracy' in the Mesopotamian divine council nor that of any polytheistic pantheon is entirely relevant to the interpretation of the Israelite divine lawsuit."⁴

1. *op.cit.*, 46-7.

2. *ibid.*

3. Wright, *op.cit.*, 46-47.

4. *ibid.*

As Wright has pointed out, Gunkel and Huffmon encountered the difficulty of Yahweh submitting Himself to the adjudication of heaven and earth, His own creation, if these elements are regarded as judges in the suit. Wright's own proposals do, however, create a situation in which one person is envisaged as playing the part of judge, jury and plaintiff. Such conditions do not prevail in any other Ancient Near Eastern legal procedure known at present. Gemser has realised the difficulty of such proposals and sought to show that the Old Babylonian *puhrum* was made up of judges and witnesses.¹ His argument is based on the fact that *šībūtum* 'elders' is, according to Walther,² a plural form parallel to *šībū* 'witnesses' and that these *šībūtum* are presided over by judges in the *puhrum*.³ These observations are misleading since *šībūtum*, whatever its etymological relationship with *šībū* maybe, is regularly used in all stages of Akkadian to mean 'elders', not witnesses. Furthermore the *šībūtum* formed part of the tribunal judging the case and are not to be confused with witnesses in court proceedings.⁴

If, in view of these obvious difficulties, it is to be proposed with Wright that neither the example of the divine assembly nor that of any polytheistic pantheon is entirely relevant to the divine lawsuit in Israel,⁵ then one must ask why the proceedings under consideration should continue to be regarded as a 'lawsuit' at all.

1. B. Gemser, *loc.cit.*, 124n.2.

2. A. Walther, *Gerichtswesen*, 45.

3. Driver - Miles, *BL*, I, 78ff.

4. T. Jacobsen, *JNES* 2 (1943) 162 n.18; H. Klengel, *Or* 29 (1960) 357-75. for the *puhrum* as a judicial body *cf.* Chap. 1. p. 41ff.

5. *op.cit.*, 47.

Köhler's analysis of the language of the 'divine lawsuit' passages of Deutero-Isaiah showed that many of the expressions used are in fact legal terms applicable to various stages of court procedure. His conclusions have been supported by more recent study.¹ It will be argued below, however, that such terms occurring in the 'lawsuits' do not in themselves necessitate a courtroom setting, heavenly or otherwise, for the *Gattung* being considered.

(B) The threat of a Lawsuit

As has been indicated by both Huffmon² and Wright³ the 'covenant lawsuit' has a form which has marked similarities to the form of the Mosaic warning passages of Deuteronomy, *eg.* Deut. 4:26; 30:19; 31:28 and 32, the song of Moses. According to Wright this reflects the fact that in the Deuteronomic tradition the covenant renewal ceremony embodied elements of the *rib* so that Moses' warnings came to be understood as having been framed in this form.⁴ Be that as it may, Wright is correct in stressing that the only covenant Deuteronomy knows is a broken covenant and the entire book is an "exposition of the covenant theology with warnings to hearken, to obey, to love, to cleave unto Yahweh, for the issues at stake are none other than life and death."⁵

1. *cf.* Gemser, *loc.cit.*; Seeligman, *VTS* 16 (1967) 244 ff; Gamper, *Gott als Richter*, 185-94; Boecker, *Redeformen*. *cf.* pp. 89 ff.

of this work.

2. *loc.cit.*, 292.

3. *op.cit.*, 43-5.

4. *op.cit.*, 44-5

5. *op.cit.*, 60.

In this connection it is worth noticing the phenomenon known as '*Die Gewissheit der Erhörung*' - 'certainty of a hearing',¹ which occurs in the Psalms of the 'individual lament' type. In these psalms the speaker pleads with Yahweh in "the language of the law - court"² Job too provides an example of an individual lament expressed in legal language with the 'certainty of hearing' element clearly present.³

As was shown in Chap. 2 terms associated with the initiation of the 'lawsuit' do not imply in themselves that a law-court is envisaged but rather one should think in terms of a prelitigation warning, *ie.* the threat of a lawsuit. This is in keeping with the warning tone of the Deuteronomic passages mentioned above and indeed with the theme of the entire Deuteronomic History. As has been argued here the 'covenant lawsuits' correspond closely to these Deuteronomic warnings and are in fact in essentially the same form and tradition. Commenting on the relationship between the 'covenant lawsuits' and Deut. 32, Huffmon says, "The only real difference is that it (Deut. 32) is not found in a prophetic book."⁴

To substantiate my proposal it will be necessary to analyse the 'lawsuit' passages in the prophets and elsewhere (*eg.* Ps. 50) to explain the presence of terms agreed to be expressions depicting court procedure.⁵

1. Gunkel, *Einleitung in die Psalmen*, # 6, 23; *OTMS*, 169-70.

2. *OTMS*, 171.

3. *cf.* Job. 19:25-29.

4. *loc.cit.*, 289.

5. see pp. 89 ff.

Consideration will first be given to those passages where Israel is being accused and warned. Mich. 6:1-8, Jer. 2:4-13, and Isa. 1:2-3 are examples in which heaven and earth are summoned and these will be considered first.

Mich. 6:1-2 reads:

וְשָׁמְעוּ נָא אֶת אֲשֶׁר יִהְיֶה אָמַר
 קוֹשׁ רִיב אֶת הַהָרִים וְתִשְׁמַעְנָה הַקְּבָעוֹת קוֹלִי:
 ב) שָׁמְעוּ הָרִים אֶת רִיב יְהוָה וְהַאֲתָנִים מִפְּדֵי אֶרֶץ
 כִּי רִיב לִיהוָה עִם-עַמּוֹ וְעִם-יִשְׂרָאֵל יִתּוֹכַח:

1. 'Hear what Yahweh is saying:

Arise plead (your case) before the mountains,
 and let the hills hear your voice.

2. Hear, O mountains, the controversy of Yahweh and you enduring foundations of the earth;
 for Yahweh has a controversy with his people,
 and he will contend with Israel.'

The significant terms in this section for court procedure are רִיב and יְתוֹכַח. The word רִיב has been subjected to close analysis by Gemser¹ both in its verbal and noun form. The result of his studies has been to show that the term is used for a legal process in court and the verb means, in some passages, to enter into such litigation. The semantic range of the term is very wide, however, and is used to mean any contention between two or more parties in or out of court.²

יְתוֹכַח as shown in Chap. 2 is by no means restricted to the law-court and the Hithp. means simply to 'enter into contention with'.

1. Gemser, *loc.cit.*, 120-4.

2. *ibid.*

What follows in vss. 3-5 is a proclamation of Yahweh's gracious acts and Israel's constant rebellion. The command of v.1 to 'Arise, plead (your case) before the mountains, and let the hills hear your voice' is not directed to the prophet acting as Yahweh's lawyer¹ but to Israel to plead her case if there is any reason why the judgements of Ch. 5 should not come upon her. Whether vss. 6-7 are to be taken as a genuine appeal by Israel to know how, in view of Yahweh's warning, she can have her פֶּשַׁע 'rebellion', and the

חַטַּאת נַפְשׁוֹ 'sin of (her) soul' pardoned, or whether it is

a mocking response by Israel the reply is clear:

הִקִּיד לְךָ אָדָם מַה-טוֹב וּמַה-יְהוּדָה דִּוְרַשׁ אֲמַדְךָ פִּי אִם עֲשׂוֹת

Mich. 6:8 אֲשַׁפֵּט וְאֶהְרַת הַפֶּד וְהַצֹּנֵעַ לִכְתּוֹת עִם אֱלֹהֵיךָ:

'He has shown you, O man, what is good; and what does Yahweh require of you but to do justice and to love loving kindness, and to walk in humility with your God.'

Israel is invited to plead her case before the mountains if she feels she has one, but since she has no case Yahweh warns her, 'enters into contention with her' (Hithp. of. כָּחַ), about her breach of covenant. This evokes a response from Israel, genuine or mock, and she is reminded of the salient points of her covenant with Yahweh.

The obvious question is, what function are the natural elements summoned to perform? At this point it is helpful to consider pre-litigation warnings and accusations as they apply to Mesopotamian procedure.

1. Huffmon, *loc. cit.*, 287.

Lautner¹ has shown that while it is expressly prohibited in LH 113 for a man who is owed goods under a private agreement to seize goods from his debtor without the latter's knowledge yet in documents from the OB period it was possible for a man to bring his debtor to court by seizing his goods and forcing him to apply to the courts to have them restored. In this way the debtor became the Plaintiff and the creditor had the private debt resolved by the court. This is basically what Yahweh is doing in the case of Israel. He challenges them to enter into litigation with Him if His claims are unjust and Israel is innocent of guilt, but in no case does Israel, or the foreign gods, offer any case to the court. Furthermore in Old Babylonian pre-litigation procedure witnesses are taken, when a person is seized, to act as witnesses to the accusation and warning of the possibility of litigation. *Urkunden*, 316 begins with the names of three witnesses then follows in line 4: *š̄i-bu an-nu-tu-um š̄a ma-ah-ri-š̄u-nu* (5) PN1 (6) PN2 *iš̄-ba-tu-ma* (7) *um -ma š̄u-ú-ma* 'these are the witnesses before whom PN 1..... seized PN2, and thus (he has spoken)'.

The text goes on with A accusing B of failure to fulfil his part in the sale of a lamb and extracting from him an assurance, before witnesses, that he is responsible for the debt and will meet it.

1. Lautner, *Streitbeendigung*, 16-19.

CT 29.12 R26 reads : *assum PN ša kaspam elišu išu em tammariššu šabassu u šibi šukunšu* 'As for PN, who owes me money, take hold of him wherever you find him and have witnesses at hand' (OB letter)¹.

The passages cited in CAD 16 p.11 show that *šabātu* is used regularly of taking people as witnesses, cf. *3 ahiūtīm šabtāma ana bit abīya erbāma.* 'Take 3 outsiders (to serve as witnesses) and enter my fathers house'. TCL 20 9918 (cited CAD 16 p.11).²

At Nuzi a number of verdicts were arrived at in favour of the plaintiff by virtue of the fact that the defendant refused to answer the charge. The procedure followed in such cases has been outlined by Koschaker³ who showed that *manzaduhlu* 'deputies' were charged with summoning the defendant. If after three attempts by the *manzaduhlu* the defendant will not come to court a judgement is rendered against him by default.

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1. cf. CAD 16 p.10b sub *šabātu* 2d and the further references there to the same procedure.
 2. Note also the O.A. practice of seizing the hem of a persons garment to urge him to litigate: *ana awātīm sakkaka ukāl* 'I am holding your hem on account of the case' BIN 4 109:8 and *awātamma laddinakkum lā tukallanni* 'I will answer you in court do not hold me (by the hem of my garment)' BIN 4 109:11, *ibid.*,110:10,translation CAD 1² p.39.
 3. Koschaker, ZA 43 (1936) 203 ff.

Liebesney pointed out that "As a rule, the deputies were accompanied by the mayor of the defendants' place and other inhabitants of the village who acted as witnesses".¹

Koschaker noted that the judgement in such cases was based solely on the plaintiff's statement and the fact that the defendant was in default. The case itself was not examined.²

In the light of these Mesopotamian procedures the natural elements summoned in the 'lawsuit' passages of the O T are best understood as witnesses to Yahweh's accusation and warning in view of Israel's breach of covenant. As was observed when dealing with Mich. 6:2 these witnesses are also present at Yahweh's challenge to the defendant to bring his case to court if he is being falsely threatened, and so become the plaintiff in the case. Failure to respond to Yahweh's warning or to bring the issue before a law-court to prove her innocent will mean that Israel has lost the case by default and punishment will inexorably follow.

A consideration of the 'lawsuits' will show how the above proposals apply in individual passages. Isa. 1:2ff is a call to heaven and earth to witness Yahweh's accusation,

בְּנֵי שָׁמַיִם וּבְנֵי אֲרֶצֶת
וְרוּחַ אֲדָמָה וְיְהוָה
: כִּשְׂעוּ בְּיָדֵי

'I have reared and brought up children but they have rebelled

against me', and warning,

עַל מַה תִּכְפוּ. עוֹד תִּזְכְּרוּן
כִּי עָרַבְתִּי

'why will you still be smitten, that you continue to rebel?' v.5.

Yahweh demands his rights under the covenant;

1. Liebesney, *JAOS* 61 (1941) 133.

2. Koschaker, *loc.cit.* .,203f.

דקצו קדפו קפירו. רע מעצצכום אנגד עיני חדלו הרע: צמדו.
 קיטב דרשו. משפט אשרו. חמוץ שפטו. יתום ריבו. אלמנה:

'Wash yourselves, be clean; remove the evil of your deeds from before my eyes; cease doing evil. Learn to do good, seek justice correct oppression, defend the orphan, plead the widow's case.'

Isa. 1:16-17.

He **urges** them to respond to his reasoning that their sins may be blotted out:

צכו-נה ונוכחה יאמר יהוה אם יהיו חטאיכם כשנים
 כשנה ילביו. אם יאזימו כתולע כצמר יהיו:

'Come let us contend together says Yahweh. Though your sins are like scarlet they shall be as white as snow. Though they are red like crimson they shall become as wool.' Isa. 1:18. If, however, they refuse to respond to his warning (Niph. cf. נסה in v. 18), then since they have no reply to His charges they will be punished by default;

ואם תמאנו ומריתם הרב תאכזר וגו'

'But if you refuse and rebel you will be devoured by the sword' v.20.

The theme of warning and accusation with promises of pardon and threats of punishment as depicted in this passage, and in the 'covenant lawsuits' generally, is the same as that of the Deuteronomic warning passages. The two in fact belong to the same genre and are pre-litigation accusations and warnings allowing for a positive response by the defendant or punishment by default.

Isa. 43:25-28 further illustrates Yahweh's call for Israel to respond to His warnings in view of her sin; as catalogued in vss. 22:24 or to bring Yahweh to court to answer the accusations in a lawsuit:

אזכיר אזכיר הוא מחה פשעיך צמעני וחטאתיך צל אזכר:

'I am He who blots out your rebellions for My own name sake, and I will not remember your sins' Isa. 43:25

In this verse Yahweh is stressing that despite her rebellion He Himself will pardon her if she responds to His warning and acknowledges her debt (cf. Isa. 1:18 cited above). If, however, Israel feels that Yahweh's accusations are without foundation she must bring Him to court:

הֲדִכִּירוּנִי נְשַׁפֵּט הַיָּחַד כְּפָר אַתָּה לְמַעַן תַּעֲדִיק :

'Make me answerable, let us enter suit together;

Set forward your arguments that you may appear righteous'.

Isa. 43:26.

The expressions הַזְכִּיר, נְשַׁפֵּט and צִדֵּק are all legal terms whose meanings are discussed on pp. 19 ff. above. They show that Israel is being challenged to bring Yahweh to court to disprove His claim and so escape punishment. In this, as in all the other 'pre-litigation warnings', the accused has no case to put and will not come to court. The case is therefore decided by default and the charge stands. Punishment follows: 'Your first fathers sinned, and your mediators rebelled against me. Therefore I profaned the princes of the sanctuary (or consecrated officials, שְׂרֵי קֹדֶשׁ), I delivered Jacob to the sword and Israel to reviling' Isa. 43:27-8.

Not every case under consideration has all the elements of the procedure mentioned, though they are implied. Thus, *eg.*, those passages which stress the presence of witnesses at the pre-litigation warnings usually have no explicit reference to the challenge to the accused to bring his accuser to court: Jer. 2:4-8 recalls the familiar pattern of Israel's rejection of Yahweh and His gracious acts¹ and vss. 9-13 contain Yahweh's accusation and warning

זָכַן עָלַי אַרְיֵב אֶתְכֶם נֹאֵם יְהוָה

'therefore I will still contend with you, utterance of Yahweh' v.9.

1. Here as in Isa. 43 it is the religious officials who are particularly condemned for the breach of covenant.

The story has always been the same says Yahweh yet עַד אָרִיב

אתכם , and not only so but ואת בני בניכם אריב

'with your children's children I will contend.' v. 23

contains a reference to the fact that Israel has no plea against the accusations levelled at her אֵיךְ תִּאמְרִי לֹא נִטְמָאתִי

'how shall you claim not to be defiled?', but

there is no direct reference couched in legal terminology to a challenge to enter into litigation.

The challenge to enter into a lawsuit is also lacking in Isa. 2 which was considered above, and in Mich. 6:1-8, where a positive response to the warning is forthcoming (vss. 6-7) and conditions for pardon are laid down, do justice, love loving kindness and walk in humility with your God' Mich. 6:8. It is not found in Mich. 1:2-7 where Yahweh is עַד 'accuser' of Israel, and where punishment by Israel's default is specified (vss. 3-7); nor does it appear in Ps. 50 which is similar in structure to Mich. 6:1-8. In all these passages the natural world is summoned as witnesses to Yahweh's accusation and warnings but the challenge or threat of lawsuit is lacking.

In contrast to this Isa. 43:25-28 has no reference to witnesses to the warning and lays stress on the challenge to Israel to bring her accuser to court (v. 26). The categories are, however, not clear cut for Hos. 4:1-3 makes no reference to heaven and earth as witnesses yet there is no explicit reference to court proceedings; rather Israel is punished by default

וענה גאון ישראל בפניו
וישראל ואפרים יפשו בעיניו

'Israel's pride testifies against himself and Israel and Ephraim

shall stumble in their guilt' Hos. 5:5.

In the case of the proceedings against foreign gods in Isa. 41:1, 21-24; 42:8-13; 45:20-24, witnesses are assembled but the gods are nevertheless challenged to enter into litigation to substantiate their claims. These proceedings, like those involving Israel, are to be viewed as a challenge to litigation since neither the gods nor Israel can possibly accept the challenge against Yahweh.

The proposal resolves the difficulty of having Yahweh act both as plaintiff and judge, a procedure not otherwise known in court procedure, and still allows the proceedings to fit properly into the background of Ancient Near Eastern legal procedure.

CONCLUSIONS

The comparison of Israelite and Mesopotamian judicial authorities illustrates the remarkable similarities which exist. The king is the supreme judge in each society but in both his power is not unlimited and he exercises his office with due regard for the local assemblies of elders in each city. The king's particular interest in land tenure and cases involving the sale or transfer of real estate is noticeable in both regions. The parallels in judicial structure extend to the local assembly of freemen and elders which in both cases has its origins in a primitive democracy. The relationship between the local judges, who were often military personnel, and this assembly in Mesopotamia illustrates the position of the Israelite 'Judges' of the pre-monarchic period as both military commanders and practising judges, first on a local, then a national level. The impression these military judges had upon Israel was profound, and for a long time afterward many Israelites looked for the charismatic qualities of these military heroes and judges in their leader. Under the monarchy the king was felt to require both qualities as a military leader and as an administrator of justice on the model of the Judges. These qualities were, to some extent looked for in kings in Mesopotamia, and Canaan, as illustrated by the Mesopotamian and Ugaritic material, but here the charisma required in the king had become a 'routinised charisma' and the close connection between military prowess and judicial ability was not stressed.

In Israel, however, the requirements of military success and legal administrative ability was felt, particularly in the early stages of the monarchy, to be essential, and the Absalom incident cited in Chapter 1 illustrates this well.

To besure the charismatic requirements of kings in Judah also became 'routinised' but in N. Israel the frequent coups show that the principle of charismatic leadership was deeply embedded and persisted throughout the history of the Northern Kingdom.

In the realm of actual legal practice the principle governing accusation - genuine and false-is notably similar in Israel and Mesopotamia. Accusation is regarded as a public duty, but only in cuneiform Law does the accuser stand to gain, at least legally, any advantage from bringing the accusation. The practice in both countries in the event of false accusation is governed by the principle that the false accuser must suffer the same fate at the hands of the authorities as his victim would have had to suffer had his accusation resulted in a conviction.

Against the background of Mesopotamian practice it is clear that the Naboth incident is an extraordinary event and not the normal process carried out in the event of an accusation being brought. The background of this particular event and the imposition of the ban in judicial terms is made clearer by a comparison with the corresponding Canaanite practice at Alalah and Ugarit where the ban was also operative.

The notion of the 'Covenant Lawsuit' in which, according to the OT scholars mentioned in Chapter 3, Yahweh freely adopts the posture of plaintiff, judge, or defendant must be reassessed. In the light of cuneiform parallels noted, the 'Lawsuit' must be reinterpreted as pre-litigation procedure in which Yahweh warns Israel of impending judgment. Yahweh is never, in this event, called upon to perform the function of more than one party in the suit, an idea quite contrary to Ancient Near Eastern practice in general and Cuneiform practice in particular.

The case of the wisdom literature (Job, Psalms) is somewhat different for the legal setting of the appropriate passages in these books is less rigid than in the Prophets, and poetic licence operates in casting Yahweh in the role of judge and plaintiff. In the prophets, however, the background is strictly judicial. The breaking of the covenant gave rise to the complaint and in the light of that the events must take place against the background of current legal practice in the courts. Mesopotamian court practice indicates that the events envisaged in the 'Covenant Lawsuit' do not fit into the pattern of courtroom practice but are best viewed as a pre-litigation process. Yahweh was in fact constantly exacting from Israel assurances of a change of heart throughout her history, that judgment might be avoided. Inevitably, however, as the cuneiform sources indicate was common practice, refusal to comply with the demands of the warning or a willingness to take the plaintiff to court, meant conviction and judgment by default.

What can be determined of Israelite courtroom practice, mostly from terminology, indicates that it corresponded closely to the sequence of events in a Mesopotamian court. The proceedings were entirely oral, in contrast to Egyptian practice, though written evidence could be produced and tablets or scrolls might be issued by the judges.

In both areas the responsibility for producing witnesses rested with the parties involved and failure to produce witnesses could mean defeat in the suit.

Israelite and Mesopotamian judges had a vital part to play in examining the witnesses and the parties, and here recourse to the oath and ordeal appears to have been more common in Mesopotamia than in Israel. In fact the ordeal is prescribed for only one case in Israelite law namely that of suspected adultery.

The type of evidence acceptable to Israelite and Mesopotamian courts was basically the same, though from the records available documents occur more frequently in the document conscious Assyrian - Babylonian courts. The judges decision was binding though decisions of the lower courts in both countries could be appealed against. The actual procedure of appeal is not clear in either case, but the decision of the king or supreme court in which the king was represented by a deputy was finally binding without appeal since it was felt to have a revelatory character.

Allowing for the different theological principles operating in Israel and Mesopotamia, the practice of the courts of justice and their structure is remarkably similar. This being so a great deal more may be learnt by the drawing of meaningful parallels between the two systems.

ABBREVIATIONS

The system of abbreviations adopted in this work follows that of The Chicago Assyrian Dictionary (CAD), Chicago 1956 - , and Keilschriftbibliographie (Ki.Bi), annual appendix to Orientalia, Rome, for cuneiform sources. For Biblical material the system adopted in The Interpreter's Dictionary of the Bible (IDB), New York, 1962, is followed.

The following is a list of less common abbreviations used in this thesis:-

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